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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Jocelyn Newman, Circuit Court Judge

Civil Action No.: 2023CP4003086
Appeal Number: 2024-001802

Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee…….Plaintiff/Appellant,

v.

All Seasons Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia ..... ….Defendants,

Of whom All Seasons Healthcare, LLC is ……...Respondent.

APPELLANT'S INTIAL REPLY BRIEF

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TABLE OF AUTHORITIES

I. *Burris Chem., Inc. v. Daniel Constr. Co.*, 251 S.C. 483, 163 S.E.2d 618 (1968)…… 5

II. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (2012)……..5

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IV. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000)……2

V. *Langley v. Graham*, 322 S.C. 428, 472 S.E.2d 259 (Ct. App. 1996)…….4, 5

VI. *Richardson v. P.V., Inc*., 383 S.C. 610, 682 S.E.2d 263 (2009)……..5

VII. *Roche v. Young Bros*., 318 S.C. 207, 456 S.E.2d 897 (1995)……. 4

VIII. *Ross v. Waccamaw Cmty. Hosp*., 404 S.C. 56, 744 S.E.2d 547 (2013)……2, 3

STATUTES

I. S.C. Code Ann. 15-79-125

RULES

I. South Carolina Rules of Civil Procedure, Rule 4

II. South Carolina Rules of Civil Procedure, Rule 82

RESPONSE TO RESPONDENT'S STATEMENT OF THE CASE

Appellant and Respondent did not participate in discovery prior to the dismissal of this case. The facts set forth by Respondent regarding the underlying malpractice claim in this case are not in the record, nor are they applicable to the issues on appeal. The only facts at issue are those pertaining to the filing of Appellant's Notice of Intent, Summons and Complaint, and the service of the same.

ARGUMENT

I. It is an error of law to dismiss Plaintiff's case when Plaintiff filed their Notice of Intent pursuant to S.C. Code Ann 15-79-125 in an improper venue.

Filing a Notice of Intent, pursuant to S.C. Code Ann. 15-79-125, in an improper venue is not grounds for dismissal. The Supreme Court in *Ross v. Waccamaw* discussed how S.C. Code Ann 15-79-125 is a procedural requirement to encourage resolution of medical malpractice claims. *Ross v. Waccamaw Cmty. Hosp., 404 S.C. 56, 744 S.E.2d 547 (2013)*. While the statute confers authority on the trial court to ensure the provisions of S.C. Code Ann 16-79-125 are met, it does not explicitly state the consequences for failure to meet the mentioned provision.

In *Ross*, the Supreme Court emphasized that "[i]t is well-established that 'the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.'" *Grier v. AMISUB of S.C., Inc.,* 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id*.

The South Carolina Supreme Court ruled "[i]t is clear that the Legislature enacted section 15-79-125 to provide an informal and expedient method of culling prospective medical

malpractice cases by fostering the settlement of potentially meritorious claims and discouraging the filing of frivolous claims." *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 63. The Court emphasizes Section 15-79-126 is not a "trap for plaintiffs with potentially meritorious claims." *Id*. Thus, the consequence for filing a Notice of Intent in an improper venue cannot possibly be harsher than the consequence for filing a summons and complaint in an improper venue. Rule 82 of the South Carolina Rules of Civil Procedure explicitly states the consequence for filing in the improper venue: "the court *shall not* dismiss the action, but shall transfer it to any proper county or court in which it could have been brought." Rule 82, SCRCP (emphasis added). After Appellant filed her Notice of Intent in an improper venue, the case was transferred to the proper county in which it could have been brought, as required by the rule. Thus, dismissal was not permitted, as the trial court did not interpret the statute correctly.

II. Appellants met the requirements of service under Rule 4(d)(8) in serving the Notice of Intent which creates a presumption of service. Respondent failed to prove service was effected on an unauthorized individual. Thus, service is deemed effective.

The first issue regarding service pertains to the USPS service Appellant utilized in serving Respondent with the Notice of Intent. In this case, the trial court misunderstood the process by which the United States Postal Service delivers mail marked as certified mail, restricted delivery. Similar to the trial court's misunderstanding of the processes of the United States Postal Service, Respondent misunderstands Appellant's service of process. Appellant incorporates her arguments from Appellant's initial brief explaining the service offered by the United States Postal Service which shows that by utilizing the "certified mail, restricted delivery" service, Appellant met the requirements of Rule 4(d)(8) for service by certified mail.

Rule 4(d)(8) states service by mail can be completed by "certified mail, return receipt requested and delivery restricted to the addressee." The trial court and Respondent fail to recognize that when an individual mails something using USPS's "certified mail, restricted delivery" service, this service is restricted to the addressee. As made clear on the return receipt itself, there is a box to be filled out by the recipient entitled "COMPLETE THIS SECTION ON DELIVERY." Respondent falsely claims it is the sender's duty to identify whether the recipient is an agent or an addressee and failure to check "addressee" creates an issue of proper service. Unless the sender of the mail is present for delivery of the mail, the sender cannot assist in indicating whether the recipient should check agent or addressee.

Because Appellant met the requirements of service, service is presumed. "When the civil rules on service are followed, there is a presumption of proper service." *Roche v. Young Bros.*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995), citing 62B Am Jur 2d Process § 111 (1990). Here, there is no question that the Agent received notice of the Notice of Intent. The agent signed the return receipt. The agent was on notice of the Notice of Intent because, as noted in Appellant's Initial Brief, an agent of Respondent contacted counsel for Appellant regarding the Notice of Intent and the scheduling of the statutorily required mediation. (see, Affidavit of Elizabeth Moultrie dated March 8th, 2024).

The Court abused its discretion in granting dismissal for failure to serve Respondent and improperly shifted the burden to Appellant when the court ruled Plaintiff failed to identify who signed the return receipt. "Under Rule 4(d)(8) the defendant, not the plaintiff, must prove that the receipt was signed by an unauthorized person. The plaintiff need only show compliance with the rules." *Roche v. Young Bros.*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995). Further, "[t]he rule simply does not require the specific addressee to sign the return receipt." *Id*. Respondent cannot

meet their burden of proving the individual who accepted service was unauthorized, because they have failed to identify the individual who signed the document.

Respondent relies heavily on the ruling in *Langley v. Graham* in arguing service was not effective because the addressee was not the signatory on the return receipt. *Langley v. Graham*, 322 S.C. 428, 472 S.E.2d 259 (Ct. App. 1996) However, the Court in *Graham Law Firm, P.A. v. Makawi* clarified the Court of Appeals' ruling in *Langley*, ruling the Court of Appeals ruled too narrowly in determining who is authorized to accept service. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (2012). Instead, the Court made clear that the addressee is not the only individual able to sign a return receipt to effect service. *Id*.

The addressee, the Registered Agent for Respondent, did not need to sign the return receipt for service to be proper because there are other individuals capable of accepting service for corporations. These determinations are often fact specific. For instance, when serving a corporation, "[s]ervice on an employee is effective when the employee has apparent authority to receive it on behalf of the employer." See *Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009). An agent's high level of actual or apparent responsibility suffices to permit service to be effective as against the principal. *Id*. In *Burris Chemical, Inc. v. Daniel Construction Co.*, the Court found that an acting general superintendent in charge of fifteen men was an agent upon whom service could be made. *Burris Chemical, Inc. v. Daniel Construction Co.* 251 S.C. 483, 163 S.E.2d 618 (1968).

In this case, the trial court failed to even contemplate whether Respondent met their burden in proving the return receipt was signed by an unauthorized individual. As a result, the trial court abused its discretion in granting dismissal.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's improper dismissal and remand this matter for further proceedings

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PROOF OF SERVICE

I certify that I have served the **Appellant's Initial Reply Brief** on Respondent, by emailing a copy of same on the **9th** day of **June 2025** addressed to its attorney of record, Julius W. McKay II at jmckay@mckayfirm.com .

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