THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2024-000592
Case No. 2020-CP-02-2238

Cassiopia Rhoads, ... Respondent-Appellant,

v.

Aiken County Sheriff's Office, ... Appellant-Respondent.

INITIAL RESPONDENT'S BRIEF OF APPELLANT-RESPONDENT

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Appellant-Respondent
Aiken County Sheriff's Office

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Rules, and Other Authorities

S.C. Code Ann. § 15-78-20(f).

S.C. Code Ann. § 15-78-30(g).

S.C. Code Ann. § 15-78-70(d).

S.C. Code Ann. § 15-78-100(c).

S.C. Code Ann. § 15-78-200.

STATEMENT OF THE CASE

The Appellant-Respondent Cassiopia Rhoads was a pre-trial detainee at the Aiken County Detention Center ("ACDC") from May 3, 2019 through June 2, 2019. The Defendant Center is operated by the Respondent-Appellant Aiken County Sheriff's Office.

On June 2, 2019, Rhoads was taken to the Aiken Regional Medical Center ("ARMC") for treatment of an abscess that developed on the upper right side of her head. During her thirty days at ACDC, she received repeated medical care and treatment by the medical providers working for Southern Health Partners ("SHP"), which was the medical contractor at ACDC during the relevant time period. Over the course of the thirty days, Rhoads had in excess of twenty different encounters with medical staff including Dr. Robert Williams, Nurse Donna Wright, Nurse Sherry Shutters, and others. Those medical encounters are pled in detail in Rhoads' Complaint. *See*, Complaint, ¶¶ 70-88. (R. ___).

Rhoads, who was a heroin drug addict, had fallen prior to her arrest and incarceration on May 3, 2019. By May 7, 2019, Rhoads' medical records first mentioned a "knot" on the right side of her head. Rhoads was going through heroin detox for the first ten days of her incarceration and had contact with nurses on a daily basis during that time. In the next couple of weeks, Rhoads began to complain about the side of her head, and she was seen on numerous occasions by SHP medical personnel. She was generally treated with pain medication and antibiotics. On May 23, 2019, Rhoads was examined by Dr. Robert Williams who diagnosed a small hematoma to the right scalp and directed that she receive warm compresses and continued pain medication.

On May 24, 2019, Rhoads was charged with "barricading" for her refusal to follow orders to return to her cell. She was moved to a B-max cell. This is referred to as the

"barricading incident" in the litigation, and Rhoads claims that she was making a "peaceful protest" to be taken to the hospital. ACDC records do not reflect any request for medical attention in association with that incident. Notably, Rhoads had just been seen by Dr. Williams the day before, and there was no reported change in her condition.

On May 28, 2019, there was an emergency call to medical because Rhoads had fainted. She was checked by Nurse Donna Wright and was cleared to remain in B-Pod. Nurse Wright did follow up with Dr. Williams following that incident, and Dr. Williams directed that a CT scan be ordered. The CT scan was scheduled for June 5, 2019. On June 2, 2019, there was an additional incident in the mid-afternoon where Rhoads collapsed. She was evaluated again by Nurse Wright who cleared her to stay in B-Pod. A few hours later, there was an additional emergency where Rhoads began vomiting. At that point, Rhoads was transported to ARMC at the direction of SHP medical personnel. She was ultimately diagnosed with a subgaleal abscess, an epidural abscess, and osteomyelitis. She underwent surgery to remove the abscess.

On November 17, 2020, Cassiopia Rhoads filed a Complaint in the Aiken County Court of Appeals, naming as Defendants Southern Health Partners, Dr. Robert J. Williams, Michael E. Hunt, in his capacity as Aiken County Sheriff, and Aiken County. Southern Health Partners and Williams reached a settlement with Rhoads prior to trial. Additionally, Rhoads voluntarily dismissed Aiken County, and the Aiken County Sheriff's Office was substituted for Sheriff Hunt. At the time of trial, the only remaining cause of action against the Sheriff's Office was a gross negligence claim.

The case was tried before Circuit Court Judge Eugene Griffith and a jury beginning on October 9, 2023. The Sheriff's Office moved for a directed verdict as to the gross negligence

claim both after Rhoads' case-in-chief and at the close of all of the evidence. Those motions were denied. The jury ultimately returned a verdict in the amount of $950,000 actual damages.

Both parties filed post-trial motions. The Sheriff's Office filed a Motion for Judgment Notwithstanding the Verdict (JNOV), a Motion for New Trial Absolute, and a Motion to Reduce the Verdict to the Statutory Caps. On March 12, 2024, Judge Griffith issued two orders: (1) Order Relating to Post-Trial Motions and (2) Order Reducing Verdict to Statutory Cap. Ther verdict was reduced to $300,000. On March 22, 2024, the Sheriff's Office filed a timely Motion to Alter or Amend Order and/or Motion to Reconsider pursuant to Rule 59(e), SCRCP, to ensure that all issues were properly preserved for appellate review.

By April 11, 2024, Judge Griffith had not ruled on the pending Motion to Alter or Amend Order and/or Motion to Reconsider. On that date, which marked thirty days after the filing of the aforementioned orders, the Sheriff's Office proceeded with filing its Notice of Appeal. Rhoads also filed a Notice of Appeal on that same date.

After the appeal was held in abeyance and jurisdiction was returned to the trial court, Judge Griffith issued an Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion on August 19, 2024. With that order, Judge Griffith granted the Sheriff's Office's Motion to Alter or Amend Order and/or Motion to Reconsider, and he also granted the Sheriff Office's JNOV motion on the basis of its defense pursuant to Section 15-78-70(d) of the Tort Claims Act. Judge Griffith further vacated his previous post-trial orders, including the Order Relating to Post-Trial Motions filed March 12, 2024, and Order Reducing Verdict to Statutory Cap filed March 12, 2024. Rhoads thereafter filed a Motion to Reconsider, which was denied by Order filed September 19, 2024.

On September 17, 2024, Cassiopia Rhoads filed a Notice of Appeal appealing the Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion filed August 19, 2024. Thereafter, on October 21, 2024, the Sheriff's Office timely filed a Conditional Cross-Appeal which states as follows:

> In the event that Rhoads seeks as relief in her appeal that this Court reverse the Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion and reinstate the previous post-trial orders which were vacated as well as the judgment previously entered on March 12, 2024, the Respondent-Appellant Aiken County Sheriff's Office hereby conditionally appeals the judgment entered on March 12, 2024, and the Order Relating to Post-Trial Motions filed on March 12, 2024, if reinstated.

See, Notice of Conditional Cross-Appeal filed October 21, 2024.[1]

[1] As indicated, on September 19, 2024, the trial court issued an order denying Rhoads' Motion to Reconsider. It was that final order issued on September 19, 2024, which triggers the thirty days for an appeal, including cross-appeal, per Rule 203(b)(1) and Rule 203(c), SCACR.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo.* The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning,* 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id.*

ARGUMENTS

I. The trial court correctly granted a judgment notwithstanding the verdict to the Aiken County Sheriff's Office based on the application of Section 15-78-70(d) of the South Carolina Tort Claims Act.

At both the directed verdict stage and in its post-trial motions, the Aiken County Sheriff's Office argued that Cassiopia Rhoads' cause of action for gross negligence is barred by the operation of Section 15-78-70(d) of the South Carolina Code, as a result of the settlement entered in this action between Rhoads and the Southern Health Partners (SHP) Defendants. Section 15-78-70(d) states: "A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence." S.C. Code Ann. § 15-78-70(d).

As the record reflects per a stipulation of the parties, Rhoads settled this action against the SHP Defendants following mediation and prior to trial. At trial, the Sheriff's Office moved for a directed verdict on the basis that Rhoads' gross negligence cause of action is barred by virtue of that settlement and then renewed that motion by way of its JNOV motion. Specifically, the Sheriff's Office argues that the prior settlement in this same civil action for the same occurrence constitutes a complete bar to any further action by Rhoads against the Sheriff's Office pursuant to Section 15-78-70(d) of the South Carolina Tort Claims Act. While initially disagreeing with the Sheriff's Office's position, the trial court granted the Sheriff's Office's Motion to Alter or Amend Order and/or Motion to Reconsider and thereupon also granted the JNOV motion on the basis of its defense pursuant to Section 15-78-70(d). That ruling was correct and should be affirmed on appeal.

Section 15-78-70(d) was interpreted by the South Carolina Supreme Court in the case of *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), which remains to date the only case that interprets and applies Section 15-78-70(d). *Wade* arose out of a motor vehicle accident. The at-fault driver was employed at the time of the accident by Berkeley County, although he was driving his personal vehicle. The plaintiff in *Wade* initially sued only the driver individually and reached a settlement. Following that settlement, the plaintiff then sued Berkeley County, which raised Section 15-78-70(d) as a bar to that action. The Supreme Court ultimately concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Therefore, because the settlement with the driver individually was not in an action under the Tort Claims Act, the Supreme Court concluded that Section 15-78-70(d) was not applicable. The Supreme Court emphasized that, when the settlement was reached,

> [N]o action [under the Tort Claims Act] has been initiated, nor had any claim been filed, against County. At the time of the settlement, Wade had only initiated an action against Pierce in his individual capacity, not against County as Pierce's employer. Accordingly, at the time Wade and Pierce executed the settlement document, there were no actions "under this chapter." Wade and Pierce's settlement did not invoke the provisions of § 15-78-70(d) barring Wade from further action against County.

559 S.E.2d at 589.

The Supreme Court in *Wade*, nonetheless, explained the scope of S.C. Code Ann. § 15-78-70(d). The Court held that "to invoke the provisions of § 15-78-70(d), there must be a settlement or judgment in an action under the Act or a settlement of a claim under the Act." 559 S.E.2d at 588-589. Therefore, if there is a settlement in an action brought under the Tort Claims Act, Section 15-78-70(d) may be invoked as a bar to any further proceedings or recovery against a governmental entity arising out of the same occurrence.

That is precisely what has occurred in the present case. There is no dispute that Rhoads brought suit simultaneously against all Defendants, including the Sheriff's Office as well as the SHP Defendants, which were named as parties in the original Complaint. The suit was brought pursuant to the Tort Claims Act in that Rhoads has asserted the state law tort claim against all Defendants, and as discussed above, the Tort Claims Act is the exclusive means by which the Sheriff's Office, as a governmental entity, may be sued in tort. The Plaintiff also cited the Tort Claims Act in her Complaint. *See* Complaint, ¶¶ 4-5. All of the Defendants, including the SHP Defendants, also cited Tort Claims Act defenses in their Answers, with the Plaintiff never moving to strike those defenses. *See*, SHP Answer, ¶ 83, Hunt Answer, ¶¶ 51-52, 57. Thus, it is beyond dispute that Rhoads brought this action under the Tort Claims Act.

There is likewise no dispute that Rhoads settled with the Defendant SHP. A release has been executed, and the SHP Defendants have been dismissed from this action with prejudice. Unlike in *Wade*, however, there were not separate suits filed. The Plaintiff did not settle with the SHP Defendants and then turn around and sue the Sheriff's Office in a separate action. To the contrary, the settlement occurred within the confines and context of this very Tort Claims Act case. This is precisely the scenario described by the Supreme Court in *Wade* where the bar of Section 15-78-70(d) may be invoked.

Additionally, to the extent that Rhoads suggests that the interpretation of Section 15-78-70(d) may be unclear, it is important to recognize that the Tort Claims Act includes its own rules of statutory construction, including Section 15-78-20(f), which states: "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, *must* be liberally construed *in favor of limiting the liability of the State*." S.C. Code Ann. § 15-78-20(f). (Emphasis added). Thus, the

limitation on liability as set forth in Section 15-78-70(d) must be liberally construed in favor of limiting the liability of the State and its political subdivisions as mandated by Section 15-78-20(f) and the supporting case law. *See, Faile v. South Carolina Department of Juvenile Justice,* 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"); *Baker v. Sanders,* 301 S.C. 170, 391 S.E.2d 229 (1990) (same).

Additionally, Rhoads' position disregards or is otherwise inconsistent with the well-settled rule of statutory construction that "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002). As the trial court correctly ruled, the reason that the General Assembly adopted Section 15-78-70(d) was to be read and applied *in pari materia* with Section 15-78-100(c) of the Tort Claims Act, which reads: "In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined." S.C. Code Ann. § 15-78-100(c). Section 15-78-100(c) requires that a jury return a special verdict specifying the proportional liability of each joint tortfeasor, both governmental and non-governmental. The reason for this is clear and supported by constitutional principles: the government and the taxpayers are not jointly and severally liable and instead are only liable for its own proportioned share of liability. The right to apportioned fault under Section 15-78-100(c) is lost, however, if a joint tortfeasor is able to settle out of the litigation. That is the reason that Section 15-78-70(d) was enacted with and must be read *in pari materia* with Section 15-78-100(c). As the current case demonstrates, if Section 15-78-70(d) is read in any other manner than what the Sheriff's Office argues, a plaintiff or claimant may settle with the principal

wrongdoer for less than its share of the total liability and then attempt to hold the governmental entity liable for damages based on a greater degree of fault than it would otherwise have, thereby resulting from the loss of its right of apportionment under Section 15-78-100(c). That was clearly not the intent of the General Assembly in enacting both Section 15-78-70(d) and Section 15-78-100(c) and the statutory scheme that was created for allowing qualified but not unlimited liability for governmental entities. *See*, *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990) (recognizing the "legislative objectives" of the Tort Claims Act are "relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government"). To reiterate, Section 15-78-70(d) was not enacted by the General Assembly to have no purpose, meaning, or application. As the Supreme Court spelled out in *Wade*, Section 15-78-70(d) is intended to apply in the scenario presented in the case at bar.

Nonetheless, in opposition to the bar of Section 15-78-70(d) on Rhoads' gross negligence claim against the Sheriff's Office, she presents a myriad of arguments, none of which have any merit. In fact, Rhoads reads into Section 15-78-70(d) elements that are not present. Moreover, Rhoads relies zealously on cases where Section 15-78-70(d) was never raised as a defense nor litigated by the parties nor addressed by the courts. Finally, Rhoads attempts to point to a different circuit court case recently settled by the Sheriff's Office where Section 15-78-70(d) had no application and was purposefully not asserted – an argument whereby Rhoads thumbs her nose at this Court's order denying permission to supplement the record and makes the legally frivolous argument anyway. Each of these points will be addressed in turn.

A. Elements of Section 15-78-70(d) Defense

Rhoads argues that the "plain language" of Section 15-78-70(d) requires a settlement to satisfy three elements or "requirements": (1) that the settlement was made with a governmental defendant, (2) that the settlement must be "under this chapter" meaning under the Tort Claims Act, and (3) that he settlement relate to the same occurrence.

As to the first point, the trial court correctly pointed out that "[c]ontrary to the Plaintiff's position, there is no requirement that the settlement or judgment must be with another governmental entity." (Order, p. 4). As the trial court further observed, "[t]here is no language to that effect in the statute, and if that were the intent of the General Assembly, such language could have been included." (Order, p. 4). The trial court is correct that there is no language in Section 15-78-70(d) – and certainly not any "plain language" – that it applies only to settlements with governmental defendants. That is simply not stated nor even implied. According to the explicit language of Section 15-78-70(d), what is required is that the settlement must occur within the context of an action brought pursuant to the Tort Claims Act. In *Wade, supra*, the Supreme Court examined this very question and concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Thus, if there is a settlement that is affected within the context of an action filed pursuant to the Tort Claims Act, then Section 15-78-70(d) is applicable.

As to her second element or "requirement," the case at bar is indisputably an action brought pursuant to the Tort Claims Act for the reasons discussed above. The suit was brought pursuant to the Tort Claims Act in that Rhoads asserted a gross negligence cause of action against the Sheriff's Office, and the Tort Claims Act is the exclusive means by which the

Sheriff's Office may be sued in tort. *See,* S.C. Code Ann. § 15-78-200. Nonetheless, Rhoads seems to argue that her settlement with the SHP Defendants is not a settlement of a "claim" brought pursuant to the Tort Claims Act. The Plaintiff insists that SHP is not a governmental entity, and hence, she has not brought a "claim" against SHP pursuant to the Tort Claims Act. However, by its explicit language, as construed in *Wade*, Section 15-78-70(d) applies to "[a] settlement or judgment in an action ***or*** a settlement of a claim under this chapter." (Emphasis added). The use of the disjunctive "or" is important, as is the language "in an action." Section 15-78-70(d) is applicable to the settlement "in an action" or the settlement of a "claim." Only one must be satisfied. As the trial court correctly recognized, within the context of the Tort Claims Act, the General Assembly has used the terms "action" and "claim" in such manner to indicate that an "action" pertains to a matter in suit and a "claim" pertains to a matter prior to suit being filed. *See e.g.,* S.C. Code Ann. § 15-78-90(b) ("Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision"). Thus, contrary to Rhoads' position, the settlement with the SHP Defendants "in an action" brought pursuant to the Tort Claims Act satisfies Section 15-78-70(d). In fact, the settlement with the SHP Defendant is not even the settlement of a "claim" because quite clearly she had filed an "action" against SHP, which is the *very same action* brought against the Sheriff's Office – which incidentally was brought "under this chapter" meaning pursuant to the Tort Claims Act. Thus, the second element or "requirement" was met.

As to the third element or "requirement," the trial court correctly ruled that "the liability of all Defendants was inextricably linked, and as a result, … the liability of the SHP Defendants and the Sheriff's Office arose out of the same occurrence, thereby making Section 15-78-70(d) applicable." (Order, p. 8). Section 15-78-70(d) required that the settlement with the SHP

Defendants was "by reason of the same occurrence." As defined by the Tort Claims Act, the term "occurrence" means "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g).

However, Rhoads misreads that statutory definition where she argues that "the prior settlement must also involve the same *occurrence of negligence*." *See*, Rhoads' Brief, p. 23. (Emphasis added). Section 15-78-70(d) says "same occurrence" and not "same occurrence of negligence." That is a critical distinction because in *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011), which is the leading case on the application of the "occurrence" language in the Tort Claims Act, the Supreme Court explained that the number of "occurrences" is not tied to the number of acts of negligence. 712 S.E.2d at 406 ("we do not adopt a bright-line test based on the existence of multiple acts of negligence"). As *Boiter* further instructs, multiple acts of negligence may give rise to a single occurrence. Most importantly, the Supreme Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407.

This case presents that very scenario. As the trial court correctly observed, the Sheriff's Office was sued for its alleged failure to provide appropriate medical care for Rhoads. (Order, p. 8). In fact, while the Sheriff's Office's liability was not premised on vicarious liability for the acts or omissions of the SHP Defendants, Rhoads alleged and argued throughout trial that the Sheriff's Office was directly liable and should have sought additional medical care for Rhoads, including a referral to the hospital, in light of the insufficiencies in the care provided by the SHP Defendants. Accordingly, the trial court "agree[d] … that any gross negligence by the Sheriff's Office is part of the same 'unfolding sequence of events' proximately flowing from the acts or omissions by the SHP Defendants in its provision of medical care." (Order, p. 8). The trial court further reasoned that

"from a causation standpoint, if the medical care provided by the SHP Defendants had met the standard of care and the Plaintiff had been properly cared for, there would have been no breach of duty on the part of the Sheriff's Office." (Order, p. 8). Accordingly, the liability of the SHP Defendants and the Sheriff's Office was "inextricably linked" such as the trial court found. In effect, without the deficient medical care by the SHP Defendants, there would have been no need for Sheriff's Office to seek additional care for Rhoads, including a referral to the hospital. Put another way, Rhoads' claims against all of the Defendants, including the Sheriff's Office, were inextricably tied to the deficient medical care she allegedly received. Consequently, the alleged acts or omissions by the Defendants, including the Sheriff's Office, resulted in the very same "unfolding sequence of events" and hence the same occurrence.[2]

As an additional argument, Rhoads appears to suggest that the trial court found Section 15-78-70(d) to be an "immunity" provision, which it did not. She insists that the General Assembly did not intend "to create total governmental immunity anytime there was a settlement within a multi-party lawsuit." *See*, Rhoads' Brief, p. 25. Rhoads, however, demonstrates a lack of understanding of what immunity is. In *Rayfield v. South Carolina Dept. of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988), this Court explained that "[o]ne who pleads immunity, conditionally admits the plaintiff's case, but asserts his immunity as a bar to liability." 374 S.E.2d at 916. Therefore, the assertion of any immunity defense assumes some finding of fault but

[2] To properly read the definition *as written*, an "occurrence" is an "unfolding sequence of events." From a grammatical standpoint, "an unfolding sequence of events" is the predicate clause that defines the term "occurrence." Nonetheless, Rhoads relies only on the back-end of the definition by focusing on "a single act of negligence." Yet, an "occurrence" is "an unfolding sequence of events," and that critical piece of the definition cannot be ignored or written out of the statute. To reiterate, the General Assembly intended for the Tort Claims Act *to be liberally construed to limit the liability of the state and its political subdivisions*. The General Assembly did not leave such a construction to chance but included that rule *explicitly* in its codified legislative findings. *See*, S.C. Code Ann. § 15-78-20(f).

nonetheless serves as a bar to liability. No one claimed Section 15-78-70(d) is an immunity provision, and there is no indication that the General Assembly intended to bestow "immunity" on a governmental entity under the circumstances where Section 15-78-70(d) applies. To the contrary, as the trial court concluded, the legislative intent of Section 15-78-70(d) is to preserve the governmental defendant's right to apportionment granted by Section 15-78-100(c). Indeed, as the trial court recognized, "the General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment." (Order, p. 6).

Finally, Rhoads argues that the Section 15-78-70(d) defense presents a jury question, and that the defense should have been submitted to the jury in this case. In making that argument, Rhoads relies on the case of *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), in which the Supreme Court ruled that "[i]f [plaintiff] alleges multiple occurrences, that is, that there was more than a single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence." 694 S.E.2d at 544. The Supreme Court said nothing, however, about the number of occurrences being the burden of the defendant to prove. In this case, the general verdict form did not show what occurrence or occurrences the jury found. Moreover, there is no indication that a Section 15-78-70(d) defense is a jury question, as opposed to a matter of law for the court to decide which is how it was properly handled in the case at bar. By suggesting that a Section 15-78-70(d) defense is a jury question, Rhoads provides no discussion as to how that question would even be practically decided by a jury since it would necessitate evidence of the settlement by a settling tortfeasor to be presented to the jury, as well as evidence of the settling tortfeasor's potential

liability. That would obviously result in jury confusion. In short, it is inconceivable that a Section 15-78-70(d) defense presents a jury question. Lastly, even if the Court were to somehow agree with this notion that a Section 15-78-70(d) defense presents a jury question, then at the very least the Sheriff's Office is entitled to a new trial absolute because the trial court found that Section 15-78-70(d) was inapplicable during the trial.[3]

In sum, the trial court correctly found that the Sheriff's Office demonstrated its entitlement to the dismissal of Rhoads' gross negligence claim on the basis of Section 15-78-70(d).

B. Rhoads' reliance on case law where a Section 15-78-70(d) was not raised, litigated, or addressed is misplaced.

To support her position that Section 15-78-70(d) does not apply to a settlement by a non-governmental defendant, Rhoads cites to a handful of cases where Section 15-78-70(d) was not applied by the appellate courts to bar any further litigation against the non-settling defendant. Those cases include *Chester v. South Carolina Department of Public Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010), *Rutland v. South Carolina Department. of Transportation*, 400 S.C. 209, 734 S.E.2d 142 (2012), and *Smalls v. South Carolina Department of Education*, 339 S.C. 208, 528

---

[3] In ruling on the directed verdict motions, the trial court ruled as follows:

> I've thought about that over and over and over. It appears to me there were two causes of action, one against the provider and one against the entity. And the resolution of one would preclude proceeding on the other. I think they stand independently. So I don't think that applies to a case with these particular types of fact. That's what I think, and so that was my ruling on that.

(Tr. IV, p. 170:11-18). Thus, the trial court ruled during the jury that Section 15-78-70(a) did not apply to this case, and on that basis, the defense could not have been submitted to the jury, even if it is deemed a proper defense for a jury to decide.

S.E.2d 682 (Ct. App. 2000). However, her argument is seriously flawed. It is a longstanding principle of South Carolina appellate jurisprudence that an appellate courts' silence on an issue does not mean the issue does not exist or is not meritorious. As former Chief Judge Alex Sanders so aptly stated, "appellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811,817 (Ct. App. 1991). *See also*, *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 564 S.E.2d 322, 323 (2001). A review of the cases cited by Rhoads does not reflect that the Section 15-78-70(d) defense was even raised, let alone addressed, on appeal. To suggest that the appellate courts implicitly ruled that Section 15-78-70(d) did not apply in those circumstances lacks merit.

In fact, with respect to the case of *Chester v. South Carolina Department of Public Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010), in which the Supreme Court ruled that Section 15-78-100(c) does not authorize a court to join co-tortfeasors who had settled pre-suit, the trial court correctly noted that the ruling in *Chester* is consistent with the scenario in *Wade*. However, the trial court also observed that "the Supreme Court did not reference Section 15-78-70(d) nor address its meaning or application in *Chester*, and the Court did not preclude the proper application of Section 15-78-70(d) as was previously outlined in *Wade*." (Order, p. 7).

Similarly, Rhoads argues that *Smalls v. South Carolina Department of Education*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000), "exposes the error in the Trial Court's reasoning." *See*, Rhoads Brief, p. 33. However, this Court did not reference Section 15-78-70(d) nor address its meaning or application in *Smalls*. Instead, this Court ruled that the government defendant's right to apportionment was lost when other tortfeasors settled before trial. The defendant did not argue that Section 15-78-70(d) barred the action, or certainly, based on the opinion, this Court

never addressed that issue. Consequently, it is inconceivable how *Smalls* can be read as demonstrating any error in the trial court's reasoning with respect to the application of Section 15-78-70(d).

Rhoads' argument is also misplaced in maintaining that Section 15-78-70(d) is at odds with the "strong public policy favoring the settlement of disputes." *Chester*, 698 S.E.2d at 560. First of all, the General Assembly establishes the public policy, and it is the General Assembly that enacted Section 15-78-70(d). Moreover, as enunciated in the Tort Claims Act, the public policy favors "relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government." *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990). Finally, as the trial court correctly observed, with its enactment of Section 15-78-70(d), "the General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment." (Order, p. 6).

C. Reliance on the case of *Crow v. Hunt* is legally frivolous and violates this Court's prior order denying supplementation of the record with the *Crow* order.

Rhoads is attempting to argue that the settlement by the Aiken County Sheriff's Office in an entirely unrelated wrongful death and survival action in the case of *Crow v. Hunt*, Civil Action Number 2020-CP-02-01434, is somehow pertinent to the issues raised on appeal. *See*, Rhoads' Brief, p. 34. In making that argument, Rhoads thumbs her nose at this Court's denial of her motion seeking to supplement the Record on Appeal with a copy of the order approving the

settlement in the *Crow* case. That motion was denied by this Court's order filed June 20, 2025. Nonetheless, Rhoads still cites to the *Crow* order and suggests that order shows that the Sheriff's Office did not have the "courage of its convictions regarding the applicability of [Section] 15-78-70(d)." *See*, Rhoads' Brief, p. 35.

As the Sheriff's Office argued in opposition to Rhoads' motion, the case of *Crow v. Hunt* stands in sharp contrast to the case at bar. *Crow* involved the suicide of the decedent, Adam Crow, within a few hours of his arrival at ACDC on May 16, 2017. When he committed suicide, Crow was in a holding cell equipped with a security camera. Crow had used a piece of paper to cover the camera lens for approximately sixty minutes before he committed suicide, and the officer working the control room did not notice that the camera lens had been covered. The case in no way involved the scope or quality of any medical care provided by SHP. In fact, it was undisputed that Crow was never seen prior to his suicide by any nurse or employee of SHP, and it was disputed whether SHP's employees knew or should have known that Crow had even been admitted into the facility. That appears to explain why SHP settled a wrongful death and survival action for the nuisance value of $25,000. Moreover, the Sheriff's Office placed no blame on SHP. The Sheriff's Office did not settle because of any issue related to the medical care provided at the Detention Center.

In sum, to highlight the dramatic factual differences between the two cases, Rhoads was a detainee for thirty days and had at least twenty encounters with SHP medical providers during that time, and the allegations against SHP were for a misdiagnosis and breach of the medical standard of care as supported by expert testimony. In *Crow*, the decedent was in the Detention Center mere hours, was still in a holding cell, and was never seen or treated by any SHP medical providers. Rhoads' attempt to equate the two cases is simply false and is legally frivolous.

Further, the Court should not tolerate Rhoads' blatant refusal to abide by this Court's previous order disallowing consideration of the *Crow* order.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent Aiken County Sheriff's Office respectfully requests the Court to affirm the Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion as issued by Circuit Court Judge Eugene C. Griffith, Jr.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Respondent-Appellant
Aiken County Sheriff's Office

June 23, 2025