THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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, Inc. is.....Respondent.

RESPONDENT'S FINAL BRIEF

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2. Whether the trial judge erred in finding the United States Postal Service "certified mail, restricted delivery" service failed to meet the requirements of South Carolina Rule of Civil Procedure 4(d)(8)

3. Whether the trial judge erred in finding Appellant failed to achieve effective service despite compliance with Rule 4(d)(8) and whether Respondent met, or was required to meet, any burden of proving the return receipt was signed by someone unauthorized to accept service

STATEMENT OF THE CASE AND FACTS

All Seasons Healthcare, Inc., is a South Carolina corporation with its principal place of business in Irmo, South Carolina, which is in Lexington County. (R. p. 269 ¶ 1). It provides nursing hospice care services to patients who have been deemed appropriate for end-of-life hospice care. (R. p. 269 ¶ 2). Its employees work at various healthcare facilities and also serve clients/patients at their home. It is not an employee or agent of Co-Defendant Amara Place, but did provide hospice care to patients there. (R. pp. 269-270 ¶ 4). At all times, Heather McCloy was registered agent for All Seasons Healthcare, Inc. (R. p. 269 ¶ 3).

Phyllis Gee had been diagnosed with late onset Alzheimer's disease and was a resident at Amara Place. (R. p. 37 ¶ 10). In September 2018, Ms. Gee and her family elected hospice care and agreed to be administered pain medication and requested a DNR (Do Not Resuscitate). (R. p. 253). All Seasons Hospice nurses do not carry pain medications or schedule drugs, as those were kept in the Amara Place under control of their staff. (R. p. 270 ¶ 5).

In the afternoon of December 29, 2019, the hospice nurse for All Seasons Healthcare, Inc., advised Amara Place to administer Ativan to help alleviate the patient's anxiety. *Id.* The family called the hospice nurse at 11:42 p.m., stating the patient's condition was not relieved and the hospice nurse returned to the facility approximately at 12:15 a.m. *Id.* The nurse arrived, questioned the med tech if the patient received any medication since she left, and the med tech stated that the patient had not. (R. p. 89). She requested that the Amara Place med tech administer medications, but they refused. (R. p. 270 ¶ 5). Plaintiff's decedent passed away on December 30, 2019, less than thirty minutes after the hospice nurse arrived. *Id.* There is no evidence of any negligence or proximate causation attributable to any act or omission of Respondent, as Respondent could not

unilaterally administer any medications that were under the exclusive and full control of Amara Place.

Plaintiff filed a Notice of Intent to File Suit on November 11, 2022, in Greenwood County. (R. pp. 1-11). None of the parties are domiciled in Greenwood County, and Defendant administered no care to the Decedent in Greenwood County. Plaintiff attempted to serve Defendant with the Notice of Intent on December 16, 2022, but the certified mail receipt shows that delivery was not restricted to the addressee and was instead ostensibly received by someone who signed "All Seasons" on the return receipt. (R. p. 189).

Plaintiff then sought to move their own action to Richland County on or about June 6, 2023. (R. pp. 142-143). On or about June 12, 2023, the "Notice of Intent" action was initiated in Richland County under a new case number; three years and 164 days after the death of the Decedent. (R. pp. 12-22). Plaintiff then filed the Summons and Complaint on June 13, 2023, and attempted to serve Defendant on June 26, 2023. (R. pp. 24-32). The return receipt was not signed by registered agent H. McCloy. (R. pp. 270-271 ¶ 7).

On April 17, 2024, Judge Jocelyn Newman in the Richland County Court of Common Pleas heard the Respondent's Motion for Summary Judgment and ruled from the bench that the Respondent's Motion was granted, and the case was dismissed. (R. pp. 154-188). The Court found that the Appellant did not initiate this action prior to the expiration of the Statute of Limitations and that Appellant never properly served the Respondent. (R. pp. 144-150). Judge Newman issued the formal Order to that effect on May 11, 2024, and this appeal followed. *Id.*

STANDARD OF REVIEW

When reviewing the granting of a summary judgment motion, the Court applies the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Helms Realty, Inc. v. Gibson Wall Co.,* 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005).

The trial court's findings of fact regarding validity of service of process are reviewed 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). Questions of fact arising from a challenge to the sufficiency of service of process are to be determined by the trial court, and such findings are binding on the appellate court unless wholly unsupported by the evidence or manifestly influenced or controlled by an error of law. *Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 67 (Ct. App. 1996). The trial court's determinations of credibility are given great deference on appeal. *Lollis v. Dutton*, 421 S.C. 467, 480-481, 807 S.E.2d 723, 429 (Ct. App. 2017); see also *Jordan v. Judy*, 413 S.C. 341, 348, 776 S.E. 2d 96, 100 (Ct. App. 2015) ("Questions regarding credibility and weight of the evidence are exclusively for the trial court").

ARGUMENT

i. THE CIRCUIT COURT PROPERLY RULED THAT DISMISSAL WAS WARRANTED WHERE PLAINTIFF FILED HER NOTICE OF INTENT IN THE WRONG COUNTY

Appellant failed to properly initiate this action, and the ruling of the Circuit Court must stand. Prior to initiating a medical malpractice action, a plaintiff is required to file a Notice of Intent to File Suit and an expert affidavit "in a county in which venue would be proper for filing and initiating the civil action." S.C. Code Ann. § 15-79-125(a). The plaintiff must also serve the

Notice of Intent pursuant to the same service rules applicable to a summons and complaint set forth in the South Carolina Rules of Civil Procedure. *Id.*

Here, Appellant initially filed their Notice of Intent on November 11, 2022. (R. pp. 1-11). It is undisputed that Greenwood County was not a proper venue in any for this action, and the initial Notice was filed there seemingly at random due to a "clerical error" on part of the Appellant. (R. p. 179 line 13). The Richland County Notice of Intent was not submitted to Richland County, the proper venue, until June 12, 2023; over 164 days past the statute of limitations ending on December 30, 2022. (R. pp. 12-22).

Words in a statute must be construed in context. *Southern Mut, Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Ass'n*, 306 S.C. 339, 341, 412 S.E.2d 377, 379 (1991). The meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute. *Id.* Courts may not, in order to give affect to particular words, "virtually destroy the meaning of the entire context" and give words a significance that is at odds with the statute itself. *Id.*

Appellant plainly failed to satisfy the prerequisites and filing rules set forth in § 15-79-125(a). Appellant argues that the Greenwood County Notice of Intent tolled the statute of limitations for their claims, but this argument requires that this Court ignore the express language and context of § 15-79-125(a) which sets forth the express requirements for proper filing of the Notice of Intent that Appellant did not abide by.

Appellant relies on *Ross v. Waccamaw Community Hospital* to argue that compliance with § 15-79-125 is not required. However, the Court in *Ross* dealt only with the issue of failing to mediate within the 120-day time frame set forth by the statute. *Ross v. Waccamaw Community Hospital*, 404 S.C. 56, 63, 744 S.E.2d 547, 550-551 (2013). The *Ross* Court was primarily

concerned with the time pressure forced upon counsel by a strict 120-day mediation requirement and the potential for gamesmanship or "mischief" by defendants in delaying the mediation to thwart the action. *Id.*

Here, the 120-day mediation requirement is not at issue, and *Ross* does not set forth similar latitude for failure to comply with the requirement that the Notice be filed in a proper venue. None of the logistical fears or gamesmanship concerns the Court in *Ross* discussed regarding the mediation deadline are at play in the present case, or in cases generally, regarding the proper venue requirement in the statute, as the onus of properly filing the Notice of Intent rests squarely and exclusively with the Plaintiff, both as a statutory requirement of § 15-79-125 and as a fundamental baseline requirement of initiating civil actions.

Further, Appellant also failed to properly initiate this action by failing to properly serve the Notices of Intent and the Summons and Complaint in this case. Notices of Intent must be served in accordance with the same service rules applicable to a Summons and Complaint. S.C. Code Ann. § 15-79-125(a). A civil action is commenced when the Summons and Complaint are filed if (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing. Rule 3(a), SCRCP.

Here, Appellant again failed to satisfy the requirements of § 15-79-125 by failing to properly serve the Notice of Intent within 120 days of filing, as the applicable statute of limitations expired less than two months after Appellant filed the initial Notice of Intent in an incorrect county. Neither of the Notices of Intent nor the Summons and Complaint were ever served in this case in compliance with Rules 3 and 4, SCRCP. Respondent will further explore its arguments regarding

service of process in this action in the more pertinent sections below, but incorporates those arguments herein regarding Appellant's non-compliance with § 15-79-125's service requirements.

For these reasons, Appellant never initiated this action as required by statute and the South Carolina Rules of Civil Procedure. Therefore, the dismissal of this action must be affirmed and this appeal must be dismissed.

ii. THE CIRCUIT COURT PROPERLY RULED THAT APPELLANT FAILED TO MEET THE REQUIREMENTS FOR SERVICE UNDER SCRCP RULE 4(d)(8), AND THAT APPELLANT FAILED TO ESTABLISH A PRESUMPTION OF PROPER SERVICE

Appellant failed to properly serve the Notices of Intent and the Summons and Complaint in this action. Proper service by certified mail under SCRCP Rule 4(d)(8) is effected when Plaintiff serves process "by registered or certified mail, return receipt requested and delivery **restricted to the addressee**." Rule 4(d)(8) SCRCP. Service by mail is defective where either an unauthorized person signed the receipt or if delivery was not restricted to the addressee. *Langley v. Graham*, 322 S.C. 428, 431, 472 S.E.2d 259, 261 (Ct. App. 1996). The burden of showing compliance is upon the party asserting proper service. *Roche v. Young Brothers, Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995).

In their brief, Appellant relies on *Roche* and argues that exact compliance with the service rules is not required. However, *Roche* does not give free reign to ignore black letter requirements that are fundamental and necessary for establishing personal jurisdiction. In fact, *Roche* specifically cites cases that have only excused very minor lapses in attempts to serve process, such as the mere time and place of service, or just permitting amending a service document that was not sworn by the serving officer. *Roche* at 210, 456 S.E.2d at 899. Appellant also attempts to use *Roche* and Rule 4(d)(8) to argue that the burden of proof shifts to the Defendant for service issues, despite the rules set forth in *Langley* and *Roche* in the paragraph above. However, this burden-shifting

provision only applies to motions to set aside default or default judgment, and are thus not applicable to dismissals for lack of personal jurisdiction and improper service, like we are dealing with here.

Langley is much closer to the present case factually than *Roche*, and expressly distinguishes from *Roche*. The Court in *Langley* states that where the addressee did not sign the return receipt, and the delivery was not restricted to the addressee only, the service is defective. *Langley* at 430-431, 472 S.E.2d at 260-261.

Circuit Courts in South Carolina have been properly acting within their discretion under this framework in non-default cases. In *Zanin v. Carolina Specialty Products, Inc.*, the Court of Common Pleas in Charleston County addressed a very similar situation in which the plaintiff attempted service by mail upon a defendant corporation. *Zanin v. Carolina Specialty Products, Inc*, 2012WL9490703 (Civil Action No. 2010-CP-10-01515 in Charleston County Ct. of Common Pleas). The plaintiff's certified mailing was addressed to ABP's owner Scott Amaral, but the mailing was not restricted to the addressee and the return receipt was signed by a "D. Reilly." *Id* at 1.

The Court in *Zanin* ruled that the plaintiff's attempt to serve the defendant pursuant to Rule 4(d)(8), which requires service by certified mail be done with return receipt requested and delivery restricted to the addressee, was defective. *Id* at 2. The plaintiff did not comply with the plain meaning of Rule 4(d)(8) which firmly requires restricted delivery to the addressee only. *Id*. The Court granted defendant ABP's Motion for Summary Judgment because the plaintiff's attempt at service by mail, in which an unauthorized person signed the receipt and delivery not restricted to the addressee, was defective and therefore the Court had no personal jurisdiction over ABP.

Our case is nearly identical to *Langley* and *Zanin*. Here, Plaintiff's filed Proof of Service

for the Notice of Intent dated December 16, 2022, contains a scan of a return receipt addressed to "H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc." (R. p. 189). This return receipt, though marked for restricted delivery, is clearly not restricted *to the addressee* as required by Rule 4(d)(8) as shown by the top right checkboxes on the return receipt. Plaintiff made this same error in their attempt to serve the Summons and Complaint on the return receipt dated June 26, 2023, where the delivery was not restricted to the addressee. (R. p. 191).

Appellant failed to satisfy their burden of showing proper service. Appellant did not follow the rules for service in any of their service attempts and have thus failed to establish personal jurisdiction of the Court over Respondent. Even if the burden shifting for default cases in Rule 4(d)(8) applied here, which Respondent denies, Appellant still failed to comply with the service rules and failed to satisfy their burden, and never properly served process after the statute of limitations and within 120 days of filing as required by Rule 3(a) SCRCP. For these reasons, the Circuit Court acted properly and did not abuse their discretion. The dismissal of this action must be affirmed.

iii. THE CIRCUIT COURT CORRECTLY RULED THAT APPELLANT FAILED TO ACHIEVE EFFECTIVE SERVICE, OR IN THE ALTERNATIVE, THAT RESPONDENT DID NOT FAIL TO MEET ANY BURDEN OF PROOF

As discussed above, Appellant failed to satisfy the rules governing service of process and thus failed to establish any presumption of proper service. A rule permitting certain persons to receive service of process on behalf of others does not imply that anyone who happens to pick up the mail can stand in for the defendant. *Graham Law Firm* at 297, 721 S.E.2d at 434.

Here, even if Respondent were required to satisfy a burden of proving that the Return Receipt was signed by an unauthorized person, which Respondent denies, Respondent met satisfied its burden and established Appellant's improper service in the lower court. Questions of

fact arising from a challenge to the sufficiency of service of process are to be determined by the trial court, and such findings are binding on the appellate court unless wholly unsupported by the evidence or manifestly influenced or controlled by an error of law. *Moore* at 524, 473 S.E.2d at 67. The trial court's determinations of credibility are given great deference on appeal. *Lollis* at 480-481, 807 S.E.2d at 429; see also *Jordan* at 348, 776 S.E.2d at 100 ("Questions regarding credibility and weight of the evidence are exclusively for the trial court").

In *Graham Law Firm, P.A. v. Makawi*, the Appellant attempted service upon the respondent Makawi as an agent of a corporate entity MKKM, and the return receipt addressed to the respondent as agent of MKKM was signed by an Ana Carvajal, and not the addressee Makawi. *Graham Law Firm* at 292, 721 S.E.2d at 431. The lower court found that Carvajal was not authorized to receive process for the MKKM based upon assertions in an affidavit that Carvajal was not authorized to receive service on behalf of MKKM. *Id* at 294, 721 S.E.2d at 431. In reviewing this decision, the Court held that, based upon the trial court's finding that Carvajal was not authorized to receive service based on the affidavit of Makawi, and the lack of evidence on the record to rebut Makawi's affidavit, that the trial court did not abuse its discretion in determining that Carvajal was not authorized to receive service for the corporate entity. *Id* at 298, 721 S.E.2d at 434.

Though appellant cites *Graham Law Firm* in support of their brief, this case is substantially similar to the present action and strongly bolsters the Circuit Court's ruling. Here, Respondent presented an affidavit of Heather McCloy, the registered agent for Respondent and the addressee on Appellant's service attempts, in its Motion for Summary Judgment below stating that McCloy did not receive any service of process, sign for receipt of any mailings from Appellant, and did not

authorize anyone else to receive service on her behalf. (R. pp. 270-271 ¶ 7). *See also* (R. p.183 lines 14-15).

Respondent presented evidence in the Circuit Court that delivery of Appellant's service attempts were not restricted to the addressee McCloy, and that no one was authorized to accept it on her behalf. There is no evidence that Appellant served process on anyone authorized to accept, and Appellant attempted service so long after the expiration of the statute of limitations that they did not allow themselves enough time to try again by another means. To the extent Appellant tries to argue that service was effected under Rule 4(d)(3), these arguments fail because Appellant attempted service by certified mail and is thus beholden to the requirements of Rule 4(d)(8).

Appellant presented no evidence to rebut the factual attestations in McCloy's affidavit, much like the Appellant in *Graham Law Firm*. The Circuit Court was well within its discretion to make factual determinations consistent with McCloy's affidavit, and well within its discretion to make determinations of credibility, for which appellate courts must confer great deference. See *Lollis*; See also *Graham Law Firm* at 298, 721 S.E.2d at 434 (deferring to the trial court's finding the affidavit credible even despite a prior ruling asserting that the affiant was "unconvincing").

In their brief, Appellant attempts to discredit McCloy's credibility and character by referencing tax proceedings taking place years before the present action that are completely irrelevant. These assertions are a transparent attempt by Appellant to taint the Court's opinion of Respondent and its registered agent and to unduly and prejudicially attack her character. That said, even if Appellant's assertion was a good-faith proper impeachment of McCloy's credibility, Appellant attempted to make this argument in the Circuit Court, and the Circuit Court had proper full discretion in (and is afforded deference for) finding the McCloy affidavit credible.

For these reasons, Plaintiff failed to effect proper service upon Respondent and failed to show that Respondent fell short of any burden of proof regarding such service in this action. Therefore, the Circuit Court's Order dismissing this action must be affirmed.

CONCLUSION

For the reasons set forth above, the Circuit Court's granting of summary judgment to the Respondent must be affirmed. Respondents further request that the Court of Appeals affirm the Judgment of the Circuit Court upon any ground(s) appearing in the Record on Appeal, as provided by Rule 220(c) of the South Carolina Appellate Court Rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **August 14, 2025**, a copy of the foregoing ***Respondent's Final Brief*** was duly served on Appellant at jrutkoksi@kassellaw.com, tmcvey@kassellaw.com, and jkassel@kassellaw.com.

s/Sherri Johnson
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