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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Diane S. Goodstein, Circuit Court Judge

Ronnie D. Tyson,.....Respondent,

v.

The Regional Medical Center of Orangeburg and Calhoun Counties,.....Appellant.

Initial Brief of Appellant

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in failing to conclude a settlement had occurred under Rule 43, SCRCP?

II. Did the trial court err in making an award of Post Judgment Interest?

STATEMENT OF THE CASE

This is an appeal from a medical malpractice action and settlement. The Respondent, Ronnie Tyson filed a Complaint against the Appellant The Regional Medical Center of Orangeburg and Calhoun Counties ("TRMC"). TRMC was a governmental hospital, and accordingly, this action against TRMC was brought pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., at the time owned by Orangeburg and Calhoun Counties.

After the completion of discovery, this case was tried before Circuit Court Judge Diane Goodstein. The trial court submitted the case to the jury which returned a verdict and awarded actual damages of $3 million to Ronnie Tyson and $0 to his wife fior her consortium claim. The Appellant TRMC's post-trial motions were denied, except that the trial court did reduce the verdict to the statutory caps amount of $1.2 million under Sections 15-78-120(a)(3) and (4) of the Tort Claims Act, and entered judgment in the amount of $1.2 million.

The case was settled prior to an appeal. However, after settlement, Respondent claimed post-judgment interest and filed a motion on same. After a hearing, Judge Goodstein found no settlement occurred and the Appellant TRMC filed a timely appeal to this Court.

STATEMENT OF FACTS

The Respondent brought this action as a result of a retained surgical object being left inside him after an operation at TRMC performed by a TRMC employed physician. Plaintiff, Ronnie D. Tyson, was admitted to TRMC was on August 3, 2018. He was then admitted under the service of Dr. Thomas Chow ("Dr. Chow") who is a hospital employee and who performed a sigmoid colon surgery on Plaintiff on August 8, 2018, while unintentionally leaving a sponge in his body. Testimony reveal that Plaintiff Mr. Tyson did come back to Dr. Chow on four subsequent times, respectively on August 24, 2018, as an outpatient; on September 7, 2018, also as an outpatient; on September 21, 2018, for his colonoscopy surgery performed by Dr. Chow; and on October 12, 2018, to the emergency department for the purpose of removing the sponge inside his body in the right quadrant area of the abdomen found by the CT scan on the same day. TRMC showed to the jury that Mr. Tyson's first two visits were the routine ones for a follow up treatment after his from his hospital admission between August 3 to 17, 2018. Plaintiff did not argue or assert that his colonoscopy surgery, which has also been performed by Dr. Chow, was caused by the failure to remove the sponge.

While the October visit was the result of complications from the first visit, Plaintiff testified that he has incurred a total of $90,141.89 in expenses from his hospital stay in October. Plaintiff testified that he had to undergo hernia surgery after the October 12, 2018, surgery. Plaintiff also asserted that he has suffered an "excruciating pain" during the 60-day period. However, TRMC asserts that Plaintiff failed to prove how his "excruciating pain" justifies a $3 million verdict as he conceded that he was able to move despite with a temporary pain during this time. As opposed to the Plaintiff's argument that Dr. Chow recklessly and intentionally left the sponge in Mr. Ronnie Tyson's body for sixty days and refused to take an action, the evidence and testimony, including Plaintiff's expert witness Dr. Stephen Cohen, proved that the negligence was not intentional. Dr. Chow testified that he would have removed the sponge immediately had he known about it. Moreover, the sponge was successfully removed on October 12, 2018, by Dr. Chow after he had the CT scan results. TRMC further believes the verdict is inconsistent. Dr. Cohen testified he did not believe Dr. Chow intentionally left the

sponge in Mr. Tyson. It was his opinion no surgeon would do such a thing.

Plaintiff Ronnie Tyson conceded by his trial testimony that his life has eventually turned back to normal as (1) he has had frequent pharmacist jobs around the country in States such as Florida, Alabama, and even in the U.S. Virgin Islands; (2) meanwhile he has earned in between $49.00 to $55.00 dollars an hour and testified he never had any surgery after June 2019; (3) he currently has a valid driver's license with no driving restrictions; (4) he has no physical restrictions prescribed by a physician for his mobility, and (5) he testified that he has never sought a mental health treatment after his October 2018 visit.

Plaintiff also failed to provide any hospital bill other than what is submitted to the Court for his October visit, which amounts to $90,141.89. Dr. Cohen has not offered opinion or testified that the sponge being left in Plaintiff caused permanent damage to Plaintiff or that it decreased Plaintiff's life expectancy to the extent that he

should be awarded a verdict of $3 million. Hence, TRMC believes the verdict of $3 million shocks the conscience because it is thirty-three (33) times higher than the economic damages. Moreover, Mr. Tyson failed to prove that leaving the sponge affected his life expectancy. Mr. Tyson continues to his life without any substantial work restrictions. He offered no proof that he incurred future medical needs related to this matter or had a permanent impairment rating. Mr. Tyson's assertions of intentional neglect are refuted by his own expert witness, Dr. Cohen, who testified no surgeon intentionally leaves a sponge in a patient's body.

After the entry of the Post-Trial motion's Order, discussions began with Plaintiff's attorneys about a resolution to this case. Phone discussions were conducted with both of

Plaintiff's attorneys. Most of the discussions were with Attorney Michael Culler. An offer of $600,000 to settle this was made to Attorney Culler. This was memorialized by email on July 18, 2024. A response was provided that Plaintiff Ronnie Tyson wanted the reduced verdict, $1.2 Million dollars, and a demand of $1.2 million was made by Mr. Culler on his client's behalf. Additional settlement discussions via phone calls and emails were conducted between the parties. At all times communicated by his counsel, Mr. Tyson did not reduce his demand of $1.2 Million dollars, which was the Tort Claims Act liability cap. Additional emails were exchanged regarding offers. A reply of August 2, 2024, reflected, "Mr. Tyson says no thanks to anything less [;than the TCA $1.2 Million cap].

In all discussion and emails, there was never any demand by Plaintiff through his attorneys for any post-judgment interest or any figure greater than $1.2 Million dollars. Plaintiff never reduced his demand of $1.2 Million dollars. Defendant's insurer, decided to settle the matter for the demand. An email and required form to order the settlement check was sent to Attorney Culler on August 12, 2024. Payment instructions were also requested and were provided to the undersigned the next day. The required form to order the settlement check was also received from Plaintiff. This form contains the signature of "Ronnie Tyson" and is dated August 12, 2024. This was provided to the carrier with a request for the settlement check.

There was never any demand for anything other than $1.2 Million dollars and no demand for post-judgment interest by either of Plaintiff's attorneys.

For the first time on September 1, 2024, Glenn Walters made a demand for post-judgment interest. This was some nineteen (19) days after this matter was settled and Ronnie

Tyson executed the Medicare form. The undersigned responded, "We agreed to pay the 1.2 Will not be paying any interest." This settlement draft and Release has been provided to Plaintiff's attorneys. An executed Release has not been returned, nor has the Satisfaction of Judgment. (See exhibits 1-6 Memo/Memo in Opposition). At the hearing, attorney Culler did not advise the court he had ever requested post-judgment interest in settlement discussions.

STANDARD OF REVIEW

In reviewing equitable matters, this court may review based on its own view of the preponderance of the evidence. Williams v Wilson, 349 S.C. 336, 339-40, 563 S.E. 2d 320, 322 (2002). However, we should not disregard the findings of the special referee, who was in a better position to weigh the credibility of witnesses. Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 237, 391 S.E. 2d 538, 543 (1989).

ARGUMENTS

I. The trial court improperly found a settlement had not occurred.

After the entry of the Post-Trial motion's Order, discussions began with Plaintiff's attorneys about a resolution to this case as set further above. These offers were memorialized by email on July 18, 2024. A response was provided that Plaintiff Ronnie Tyson wanted the reduced verdict, $1.2 Million dollars, and a demand of $1.2 million was made by Mr. Culler on his client's behalf. Additional settlement discussions via phone calls and emails were conducted between the parties. A reply of August 2, 2024, reflected, "Mr. Tyson says no thanks to anything less [;than the TCA $1.2 Million cap]. In all discussion and emails, there was never any demand by Plaintiff through his attorneys for any post-judgment interest or any figure greater than $1.2 Million dollars. Plaintiff never reduced his demand of $1.2 Million dollars. Defendant's insurer, The insurer decided to settle the matter for the demand. An email and required form to order the settlement check was sent to Attorney Culler on August 12, 2024. This should have met the requirements of Rule 43, SCRCP. Payment instructions were also requested and were provided to the undersigned the next day. The required form to order the settlement check was also received from Plaintiff. This form contains the signature of "Ronnie Tyson" and is dated August 12, 2024. This was provided to the S.C. IRF with a request for the settlement check. Again, there was never any demand for anything other than $1.2 Million dollars and no demand for post-judgment interest by either of Plaintiff's attorneys. For the first time on September 1, 2024, Glenn Walters made a demand for post-judgment interest. This was some nineteen (19) days after this matter was settled and Ronnie Tyson executed the Medicare form. The undersigned responded, "We agreed to pay the 1.2 Will not be paying any interest."

This settlement draft and Release has been provided to Plaintiff's attorneys. An executed Release has not been returned, nor has the Satisfaction of Judgment.

The doctrine of judicial estoppel evolved to protect the truth-seeking function of the judicial process by punishing those who seek to misrepresent facts to gain advantage. Hayne Fed. Credit Union v Bailey, 327 S.C. 242, 252, 251, 489 S.E. 2d 472, 477 (1997); see also Johns S. Clark Co. v. Faggert & Frieden, P.C., 65 F. 3d 26, 29 (4th Cir. 1995) (stating goal of judicial estoppel "is to prevent a party from playing 'fast and loose' with the courts, and to protect the essential integrity of the process.") As explicitly embraced by our supreme court, "[j]udicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same related litigation." Hayne, 327 S.C. at 251, 489 S.E. 2d at 477. "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." Id. However, the Hayne court only adopted the doctrine as it applies to facts, not law.

The application of judicial estoppel "is an equitable concept, depending on the facts and circumstances of each individual case, [and] application of the doctrine is discretionary." Carrigg v. Cannon, 347 S.C. 75, 83-84, 552 S.E. 2d 767, 772 (Ct. App. 2001)(quoting Hawkins v. Bruno Yacht Sales, Inc., 342, S.C. 352, 368, 536 S.E. 2d 698, 706 (Ct. App. 2000), cert. granted Sept. 27, 2001)). Generally, for the doctrine to apply, courts look to this following factors:

First, a party's later position must be clearly inconsistent with its earlier position. Second,... whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled, ...' A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

N.H. v. Me., 532 U.S. 742, 750-51 (2001) (citations omitted); see Lowery v Stovall, 92 F. 3d 219 (4th Cir. 1996).

There was never any demand orally or in writing, for any interest. The only figure was the liability cap of $1.2 million dollars. These emails should meet the requirement of Rule 43, SCRCP. They further contain the signature of Plaintiff to the settlement check form with no qualification of interest.

For Plaintiff to nineteen days later take a contrary position violates Rule 43, SCRCP and the principles of Hayne Federal Credit Union and progeny.

This settlement was relied on by Appellant to not file any additional appeal as to the jury verdict. To then alter the settlement would prejudice Appellant and then would also be a violation of the doctrine of unclean hands. Williams v Jeffcoat The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. The unclean hands doctrine recognizes the principle that one who seeks redress in a court of equity must himself not be guilty of some wrongdoing. For a party to succeed on an unclean hands defense, the conduct of the person sought to be barred from recovery under the doctrine need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character. Any willful act concerning the cause of action that rightfully can be said to transgress equitable standard of conduct is sufficient to establish a defense. Jeffcoat.

II. Did the trial court err in making an award of Post Judgment Interest?

Section 15-78-120 of the South Carolina Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. Section 15-78-120(a)(3) provides that "[n]o person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120(a)(3). (Emphasis added). Additionally, Section 15-78-120(a)(4) establishes an aggregate cap of $1.2 million for multiple claims as follows: "The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed

physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed one million two hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved." S.C. Code Ann. § 15-78-120(a)(4).

Importantly, in Parker v. Spartanburg Sanitary Sewer District, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), this Court, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding $300,000." 607 S.E.2d at 716. The same is true with respect to the statutory cap for torts committed by a physician pursuant to Section 15-78-120(a)(3). Notably, in Campbell v. City of North Charleston, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), this Court again reaffirmed that "the plain meaning of the statute indicates this cap must be executed" and that "under the plain meaning of section 15-78-120(a), courts must apply the statutory cap to actions brought pursuant to the Act." 848 S.E.2d at 793-794. This Court also emphasized that "the application of the cap is mandatory and self-executing." 848 S.E.2d at 793.

Additionally, 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) ("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"). See also, 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). Thus, where there is an ambiguous or challenging term like the statutory definition of "occurrence," that provision must be liberally construed to limit the liability of the governmental entity.

Section 4 of Article V of the South Carolina Constitution requires that procedural rules

must be subordinate to statutory law. That constitutional provision states: "The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts." See, S.C. Const., art. V, § 4. (Emphasis added). In construing this provision, the Supreme Court in Stokes v. Denmark Emergency Medical Services, 315 S.C. 263, 433 S.E.2d 850 (1993), explained that "[t]he clause 'subject to the statutory law' establishes the intent to subordinate to the General Assembly the Court's rulemaking power in regard to practice and procedure." 433 S.E.2d at 852. See also, Marichris v. Derrick, 384 S.C. 345, 682 S.E.2d 301, 305 (Ct. App. 2009) ("A rule of civil procedure may not limit the provisions of a statute").

Therefore, the settlement cannot be enlarged to encompass an amount over the liability cap of $1.2 Million dollars of the Tort Claims Act.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Regional Medical Center or Orangeburg and Calhoun Counties respectfully requests that the Court reverse in part the post-trial order of Circuit Court Judge Goodstein to reverse the award of post- judgment interest.

Respectfully submitted,

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