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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

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Appellate Case No. 2025-000563
Case No. 2016-CP-46-3181

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Rita Pratt, Individually and as the Personal Representative of the Estate of William Pratt, Deceased,..... Respondent,

v.

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center; Jaleesa Heyward, RN; South Carolina Emergency Physicians, LLC; Jonas Varaly, DO; Rock Hill Radiology Associates, LLC; and Geoffrey T. Gilleland, MD, ..... Defendants,

Of Which, Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, MD are ..... Petitioners.

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# BRIEF OF PETITIONERS

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## QUESTIONS PRESENTED

I. Did the Court of Appeals and the trial court err in failing to grant a set-off for the Amisub settlement based on the allocations announced to the trial court when the settlement was placed on the record in open court but rather allowed the Respondent to alter those allocations after knowing the jury's verdict?

## STATEMENT OF THE CASE

This is an appeal from a medical malpractice case. On October 28, 2016, the Respondent Rita Pratt, individually and as the Personal Representative of the Estate of William Pratt, filed a Complaint against the Petitioners Geoffrey T. Gilleland and Rock Hill Radiology Associates, LLC. The Complaint includes causes of action for wrongful death, survival, and loss of consortium. (R. 28-29). The Respondent alleges that the Petitioners were negligent in "failing to notify Mr. Pratt's treating physicians of the concerning CT Scan results." (R. 27). The Respondent further alleges that "Dr. Gilleland was acting within the course and scope of his employment and/or agency relationship with Rock Hill Radiology." (R. 25-26).

By Order filed March 6, 2017, the trial court consolidated this action with another action brought by the Respondent against the Defendants Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center ("Amisub"); Jaleesa Heyward, RN; South Carolina Emergency Physicians, LLC; and Jonas Varaly, D.O. (R. 18-19).

After the completion of discovery, the case proceeded to trial on February 3, 2020, before Circuit Court Judge Daniel D. Hall and a York County jury. The Petitioners moved for a directed verdict at the close of the Respondent's case-in-chief and at the close of the evidence. During the trial, the Defendant Amisub reached a settlement with the Respondent in the amount of $250,000. (R. 7-11, 565). On February 10, 2020, the jury returned a verdict in favor of Dr. Varaly on all claims, in favor of the Petitioners on the wrongful death claim only, and in favor of the Respondent on the survival and loss of consortium claims. The jury allocated fault as ninety percent to Dr. Gilleland and ten percent to Rock Hill Radiology. The jury awarded actual damages of $360,000 on the survival claim and $640,000 on the loss of consortium claim. (R. 3-5).

The Petitioners thereafter filed post-trial motions including for judgment notwithstanding the verdict (JNOV), or alternatively, a new trial absolute. In the alternative, the Petitioners also moved for a set-off of the settlement reached by the Respondent with Amisub during the trial and a reduction of the verdict based upon the cap on non-economic damages in accordance with S.C. Code Ann. § 15-32-220. (R. 52-65).

The trial court did not hold a hearing on the post-trial motions. Instead, the trial court issued a Form Order filed May 4, 2020, denying the JNOV and new trial absolute motions. The trial court granted a set-off of $83,333.33 each for the survival claim and the loss of consortium claim. (R. 12-14). The Petitioners then filed a Rule 59(e) motion. (R. 125-129). After a hearing held on June 11, 2020, the trial court issued a Form Order on July 6, 2020, denying the Rule 59(e) motion. (R. 15-17).

The Petitioners thereafter filed a timely appeal to the South Carolina Court of Appeals. On January 15, 2025, the Court of Appeals issued a published opinion affirming the trial court's denial of all post-trial motions. The Petitioners thereafter petitioned for rehearing, and that petition was denied by order entered on February 19, 2025. (App. 28-29). The Petitioners thereupon filed a petition for writ of certiorari which has been granted by this Court as to Question VII only pertaining to the set-off issue.

## STANDARD OF REVIEW

"When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188, 190 (Ct. App. 2012). "Section 15-38-50 grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." *Ellis v. Oliver*, 335 S.C. 106, 515 S.E.2d 268, 272 (Ct. App. 1999).

On appeal, this Court "reviews all questions of law de novo." *Fesmire v. Digh*, 385 S.C. 296, 683 S.E.2d 803, 807 (Ct. App. 2009). Thus, rulings as to the setoff arising by operation of law under S.C. Code Ann. § 15-38-50 are reviewed *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 Court of Appeals and trial court erred in failing to grant a set-off for the Amisub settlement based on the allocations announced to the trial court when the settlement was placed on the record in open court but rather allowed the Respondent to alter those allocations after knowing the jury's verdict.**

On February 10, 2020, a judgment was entered in the amount of $1 million in favor of the Respondent against the Petitioners. By Form Order filed May 4, 2020, the trial court granted "a set off of Plaintiff's claims in the amount of $83,333.33 each for the survival claim and the loss of consortium claim from the time the judgment was rendered on February 10th, 2020." (R. 12-14). Therefore, the total judgment amount entered by the trial court is $833,333.34.

During the course of the trial, the Defendant Amisub reached a settlement with the Respondent for a total of $250,000. (R. 7-11, 565). There is no dispute that the claims that the Respondent brought against Amisub are the same as the claims brought against the Petitioners. Likewise, there is no dispute that the injuries claimed against Amisub are the same as the injuries claimed against the Petitioners. Thus, the parties agree, and the Court of Appeals confirmed, that the Petitioners are entitled per statute and in equity to a set-off of the settlement amount paid by Amisub. *See*, S.C. Code Ann. § 15-38-50; *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967); *Truesdale v. South Carolina Highway Department*, 264 S.C. 221, 213 S.E.2d 740 (1975).

As the Court of Appeals acknowledged, the Respondent conceded that "[w]hen the settlement was announced to the Court during trial, the parties suggested the settlement funds might be allocated with 90% apportioned to the loss of consortium claim and 5% allocated respectively to the survival and wrongful death claims." (R. 97). However, on February 20, 2020, which was ten days after the trial ended and the judgment was entered, the Respondent petitioned the trial court to approve the settlement with Amisub using a different allocation of the

$250,000 settlement amount among the three claims than the allocation that had been conveyed to the trial court and placed on the record in open court during the trial. The Respondent claimed an allocation of one-third to each claim. That would reduce the set-off for the loss of consortium action from $225,000 to $83,333.33 and increase the set-off for the survival action from $12,500 to $83,333.33. That would also increase the set-off for the wrongful death action from $12,500 to $83,333.33; yet, that change was made after the Respondent learned the jury returned a defense verdict on the wrongful death claim. During the hearing, the trial court acknowledged that "at the time the settlement was agreed upon during the course of the trial that was made a part of the record." (R. 907). The trial court nonetheless still applied the set-offs as requested by the Respondent. (R. 907). That constitutes legal error that should be reversed.

The Court of Appeals found no error because a "settlement allocation hearing" may not even take place until after the jury verdict. The Court of Appeals, however, conflated the "settlement allocation hearing," which correctly must occur after the trial, with a settlement approval hearing where a court approves a death settlement. This Court in *Jolly v. Fisher Controls International, LLC.*, 443 S.C. 511, 905 S.E.2d 380 (2024), did not hold that a settlement approval hearing must await the completion of trial. In effect, the *Jolly* case does not require a court to await trial to approve the settling parties' own stipulated allocation of the settlement amount between wrongful death, survival, and loss of consortium claims. If that were the law, a settlement reached between a plaintiff and one of multiple defendants early in the litigation could not be approved for months or even years until all parties settled or the case gets tried. That is clearly not what this Court intended with its ruling in *Jolly*.

Indeed, this Court has held that a trial court when applying a set-off should give effect to the settling parties' agreement if that agreement is bona fide and reasonable. *See*, *Riley v. Ford*

*Motor Co.*, 414 S.C. 185, 777 S.E.2d 824 (2015). Here, the trial court allowed the Respondent to alter that agreed-upon allocation after the verdict was returned and after she knew the result from the trial. Importantly, the trial court did so without making any finding that the settling parties' agreement was not reasonable or bonafide. In fact, a review of the record reflects that none of the parties, including the Respondent, ever took the position that the agreed-upon allocation which was placed on the record during trial was not reasonable or bonafide.

To the extent that the Respondent claims that she should not be bound by the settlement agreement as placed on the record in open court, that flies in the face of Rule 43(k), SCRCP. This Court has ruled that "Rule 43(k) is applicable to settlement agreements." *South Carolina Human Affairs Commission v. Zeyi Chen*, 430 S.C. 509, 846 S.E.2d 861, 866 (2020). Rule 43(k) provides in relevant part as follows:

> No agreement between counsel affecting the proceedings in an action shall be binding unless [1] reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or [2] unless made in open court and noted upon the record, or [3] reduced to writing and signed by the parties and their counsel.

Rule 43(k), SCRCP. This Court explained that the terms of Rule 43(k) "are mandatory, which precludes a party from turning to contract or equitable principles (or counter public policy arguments) to vitiate those terms." 846 S.E.2d at 867. Moreover, this Court has identified the very purpose of Rule 43(k) as "the avoidance of uncertainty." *Id*. Thus, "[a]s a matter of public policy and to avoid disputes over settlements, Rule 43(k) sets forth several methods for making a settlement agreement binding and enforceable." *Id*.

Importantly, as the trial court confirmed, the settlement agreement between the Respondent and Amisub, including the allocation of that settlement amount to the three claims tried, was placed on the record in open court during trial, thereby completely satisfying one of

the methods under Rule 43(k) and thus "making [the] settlement agreement binding and enforceable." *Id*. The Respondent should be bound under Rule 43(k) to that settlement agreement as placed on the record in open court, including the allocation of the settlement with 90% apportioned to the loss of consortium claim and 5% allocated respectively to the survival and wrongful death claims.

Section 15-38-50(1) requires the court to "reduce[] the claim against others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater." S.C. Code Ann. § 15-38-50(1). That set-off amount should be determined at the time that the settlement is placed on the record in open court, and not, as has been allowed to occur in the case at bar, after the case gets tried to verdict, thereby allowing the allocation to be altered or manipulated based on the result from the trial. Section 15-38-50(1) uses the term "stipulation," and as Rule 43(k) dictates, the settlement amount and allocation among claims (if there is an allocation) should be established when the settlement is placed on the record in open court.

In *Jolly*, *supra*, this Court, with the exception of Chief Justice Kittredge, expressed reluctance to apply Section 15-38-50 by its plain language *in all scenarios*. In his dissent, the Chief Justice observed that "Section 15-38-50 manifestly requires settling parties to allocate settlement proceeds at the time of the settlement." *Jolly*, 905 S.E.2d at 395 (Kittredge, J., dissenting). He further wrote: "No construction of the plain language of this statute permits a plaintiff to take a wait-and-see approach to allocating proceeds." 905 S.E.2d at 396. (Kittredge, J., dissenting). However, the majority's reluctance makes sense in the scenario, as presented in the *Jolly* case, where unlike the present case, there was no "stipulated amount" among the settling parties. The majority's reluctance also makes sense in the scenario, as presented in the

case of *Rutland v. South Carolina Department of Transportation*, 400 S.C. 209, 734 S.E.2d 142 (2012), where there was a "stipulated amount" among the settling parties, but there was also the recognition that a non-settling defendant, who was not a party to that "stipulated amount," should not be bound by it, but rather should have the opportunity post-trial to demonstrate, as occurred in *Rutland*, that the "stipulated amount" was not reasonable or bonafide.

The case at bar, however, presents a third scenario – entirely different from that in *Jolly* and *Rutland*. Here, the Appellants, as the non-settling defendants, take the position that the "stipulated amount," as agreed to by the Respondent at the time of the settlement and placed on the record in open court, and which has not been shown to be not reasonable or bonafide, should be binding on the Respondent as a settling party. In this scenario, unlike in *Jolly* and *Rutland*, it makes perfect sense – and demonstrates compliance with Rule 43(k) and the equities at play – to hold the Respondent, as a settling party, to the "stipulated amount" made at the time of the settlement and as placed on the record in open court so as to eliminate any uncertainty, to prevent manipulation, and to foster fairness and equity.

In sum, in this case, the set-offs should have been applied based on the settling parties' original agreement as addressed *at the time the settlement was announced to the trial cour*t and placed on the record in open court, and the Respondent should be bound by that allocation. Accordingly, the Court should expand on its analysis in *Jolly*, clarify the confusion wrought by the Court of Appeals with its decision, and give legal and binding effect to the settling parties' "stipulated amount." Accordingly, the Court is respectfully asked to grant a set-off of $225,000 for the loss of consortium claim and $12,500 for the survival claim.

## CONCLUSION

Based on the foregoing discussion and analysis, the Petitioners Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, M.D. respectfully request that this Court reverse the decision of the South Carolina Court of Appeals as to Question VII. Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, M.D. further request that the Court give effect to the settling parties' agreement as placed on the record in open court and grant a set-off of $225,000 for the loss of consortium claim and $12,500 for the survival claim.

Respectfully submitted,

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