

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No. 2024-CP-40-3454

Appellate Case No. 2025-000378

Bernard Bagley, #175851,

Appellant,

v.

Palmetto Richland Hospital Prisma,
Health,

Respondent.

BRIEF OF APPELLANT

Bernard Bagley
#175851/SB21b/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

Pro Se

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL JUDGE ERR IN FAILING TO FIND THIS ACTION IS RESPONDENT'S DUTY TO ITS EMERGENCY SURGERY PATIENT TO PROVIDE COMPETENT MEDICAL CARE THAT HAS EVOLVED INTO ABSOLUTE DUTY THAT IS INCAPABLE OF BEING DELEGATED, THUS, HOSPITALS ARE LIABLE FOR NEGLIGENCE OF EMERGENCY SURGERY CAREGIVERS EVEN IF THEY ARE DESIGNATED AS INDEPENDENT CONTRACTORS?
- II. DID THE TRIAL JUDGE ERR IN FAILING TO FIND THAT RESPONDENT IS LIABLE UNDER DOCTRINE OF OSTENSIBLE AGENCY FOR NEGLIGENCE ACTS OF PHYSICIAN HIRED AS INDEPENDENT CONTRACTOR, BECAUSE THE RESPONDENT HELD ITSELF OUT TO PUBLIC BY OFFERING TO PROVIDE SERVICES; THE RESPONDENT PROVIDED CARE TO APPELLANT; AND ADMITTED AND TREATED APPELLANT UNDER ITS CARE?

STATEMENT OF THE CASE

On December 29, 2023, Bernard Bagley, pro se, Appellant brought this action alleging one of the C3 screws protruding and extending from the anterior hardware plate in his cervical spine causing unnecessary and wanton infliction of severe pain. On March 1, 2021, Appellant was admitted in the Palmetto Richland Hospital Prisma (d/b/a) Prisma Health Richland for emergency cervical spine surgery to decompress his spinal cord and pinched nerves in C3, C4, and C5, in which he underwent a multi-level fusions of the same. The surgery was performed on March 2, 2021. A few weeks afterwards, Bagley was having post-surgery complications swallowing, and suffering excruciating pain throughout his neck and throat, and back, along with other related complications. In August 22, 2022, an x-ray exam of Bagley's cervical spine image shows a finding C3-C5 ACDF with one of the C3 screws loose protruding and extending from the plate.

On June 6, 2024, Richland County Office of the Clerk of Court finally filed the Appellant's Complaint. The Respondent produced an Affidavit in which its Director of HR Operations, Jim Reames, stated that when Gregory Grabowski, MD, treated and admission of the Appellant to Prisma Health Richland Hospital from March 1, 2021 to March 5, 2021, Dr. Grabowski was not employed by the Respondent by Prisma health- Richland. Appellant did not know the name of the doctor whom treated and admitted him into the hospital, in which he was trying to obtain those records without success to show that the Respondent is vicariously liable for negligence and deviations of accepted standards of practice by the Respondent's independent contractor employee.

On January 16, 2025, Appellant appeared before Presiding Judge Daniel Coble via virtual, in which Respondent's attorney James E. Parham, Jr., P.A., of the Richland County Bar appeared on its behalf. Judge Coble granted Respondent's Motion for Summary Judgment as hereby dismissed, discontinued and forever ended with prejudice without meaningful consideration of Appellant's filed pleadings and extension for time to obtain proof to overcome Respondent's Motion for Summary Judgment, whereby a genuine issue as to any material to show that Respondent is not entitled to judgment as a matter of law.

FACTS

Appellant submit Appendix page 2, MRN: 977417279 Discharge Summary dated 3/3/21, at 3:21pm, by Amanda Mickey, [180884], showing admission diagnoses and admitting physician in support and relevant to the arguments at this point in his brief.

ARGUMENTS

I. THE TRIAL JUDGE DID ERR IN FAILING TO FIND THIS ACTION IS RESPONDENT'S DUTY TO ITS EMERGENCY SURGERY PATIENT TO PROVIDE COMPETENT MEDICAL CARE THAT HAS EVOLVED INTO ABSOLUTE DUTY THAT IS INCAPABLE OF BEING DELEGATED, THUS, HOSPITALS ARE LIABLE FOR NEGLIGENCE OF EMERGENCY SURGERY CAREGIVERS EVEN IF THEY ARE DESIGNATED AS INDEPENDENT CONTRACTORS.

Appellant avers that one of the screws at C3 in his cervical spine is protruding and extending from the anterior hardware plate falls under common-knowledge exception to requirement of expert testimony in malpractice and medical negligence action because the claim falls within a laymen's common knowledge or experience of not being able to swallow with complications and having excruciating severe pain, resulting in a breach of duty owed to him. S.C. Code §15-36-100(C)(2), states, that "the contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." SEE Appendix page 3, MUSC Health Neurosurgery Clinic Note established Appellant's chief complaint of hardware failure and other medical complications related to to the same. An Assessment/Recommendation by Nathan C. Davis, MD, Physician Specialty Neurosurgery.

Nevertheless, it is the Respondent's duty to its emergency surgery admitted patient to provide competent medical care to prevent a cervical spine screw from loosening. In addition, being the emergency surgery admitted hospital and caregiver they are liable for negligence even if they have a designated independent contractor. In *Simmons v. Tuomey Regional Medical Center*, 330 S.C. 115, 498 S.E.2d 408 (1998), held that questions of law or fact regarding duties and liabilities of practitioners negligence and malpractice, states, "even though emergency room physicians who treated accident victim for contusions and then released him were designated as independent contractors, hospital could be liable in medical malpractice action for their allegedly negligent diagnosis and treatment, which purportedly resulted in patient's death from subdural hematoma six weeks later." SEE: Restatement (Second) of Agency §250 (1958). Also, *Durkin v. Hansen*, 313 S.C. 343, 437 S.E.2d 550 (1993), "Respondent's cannot insulate themselves from liability which has been assumed by agreement and, additionally, imposed by statute, by the mere employment of an independent contractor." SEE: *Osborne v. Adams*, 346 S.C. 4, 550 S.E.2d 319 (2001), the Court held that, "fact questions precluded summary judgment for hospital, and decision adopting doctrine of ostensible agency would be given retroactive effect. In addition, the Court granted certiorari to review the Court of Appeals' decision, in light of its modification of *Simmons I.*" SEE: *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000), ("*Simmons II*").

II. THE TRIAL JUDGE DID ERR IN FAILING TO FIND THAT RESPONDENT IS LIABLE UNDER DOCTRINE OF OSTENSIBLE AGENCY FOR NEGLIGENT ACTS OF PHYSICIAN HIRED AS INDEPENDENT CONTRACTOR, BECAUSE THE RESPONDENT HELD ITSELF OUT TO PUBLIC BY OFFERING TO PROVIDE SERVICES; THE RESPONDENT PROVIDED CARE TO APPELLANT; AND ADMITTED AND TREATED APPELLANT UNDER ITS CARE.

Appellant avers that the emergency cervical spine surgery was performed at Prisma Health Richland (d/b/a), or Palmetto Richland Hospital Prisma, and received care at the same on March 1, 2021 through March 5, 2021. Appellant developed serious excruciating pain and difficult swallowing, along with other related medical complications a few weeks afterwards. In addition, Appellant asserts that under the Restatement (Second) of Torts §429, a plaintiff must show that:

(1) the hospital held itself out to the public by offering to provide services; (2) the plaintiff looked to the hospital, rather than the individual physician, for care; and (3) a person in similar circumstances reasonably would have believed that the physician who treated him or her was a hospital employee. When the plaintiff does so, the hospital will be held vicariously liable for any negligent or wrongful acts committed by the treating physician. The hospital may attempt to avoid liability for the physician's acts by demonstrating the plaintiff failed to prove these factors.

The Appellant further asserts that the Respondent provided services March 1, 2021 through March 5, 2021; Appellant looked to the hospital, rather than the individual physician for care, because he was told that the chief surgeon for the hospital would performed the cervical spine surgery because of the material SCDC was only willing to pay the cost for, i.e. surgery and hardware; and the Appellant honestly believed that the hospital Chief Orthopaedic Spine Surgeon performed the cervical spine surgery, but more importantly, a hospital employee. (Appendix pages 1-2). SEE: Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001), fact questions precluded summary judgment for hospital, and decision adopting doctrine of ostensible agency in accordance to Restatement (Second) of Torts §429.

Additionally, Appellant contends that S.C. Codes §15-32-220(A)(B)(D)(1)(2)(E); §15-32-230(C)(1)(2); §15-38-15; and §15-78-10, et. seq., South Carolina Tort Claims Act may apply.

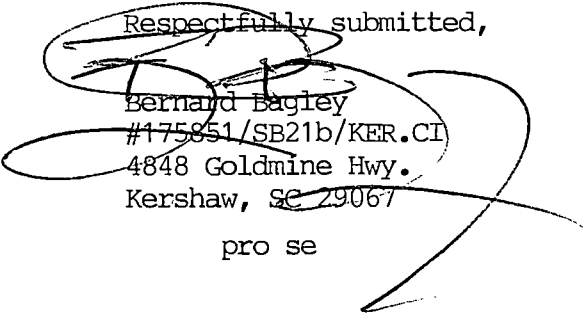
In short, Appellant avers that the trial judge and Respondent is continually causing him psychological damages and causing him economical or non-economical loss.

CONCLUSION

WHEREFORE, for the reasons stated, this Court should reverse the judgment of the circuit court, and appoint counsel and a psychological professional to demonstrate economical and non-economical loss.

March 28, 2025

Respectfully submitted,


Bernard Bagley
#175851/SB21b/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

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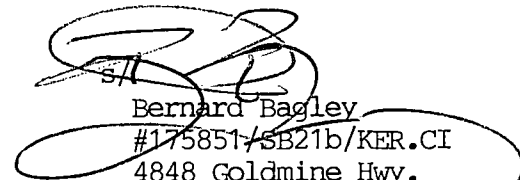
Palmetto Richland Hospital Prisma
Health,

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant; Designation of Matter to be Included in the Record on Appeal; and Appendix on the Respondent's attorney on record James E. Parham, Jr., P.A., by depositing a copy of each in the U.S. Mail, postage prepaid, on March 28, 2025, addressed to James E. Parham, Jr., P.O. Box 1516, Irmo, SC 29063.

March 28, 2025


Bernard Bagley
#175851/SB21b/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067
pro se

Bernard Bagley
#175851/SB21b/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

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SC Court of Appeals
Jenny A. Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211

RE: Bernard Bagley v. Palmetto Richland Hospital Prisma Health,
Appellate Case No. 2025-000378.

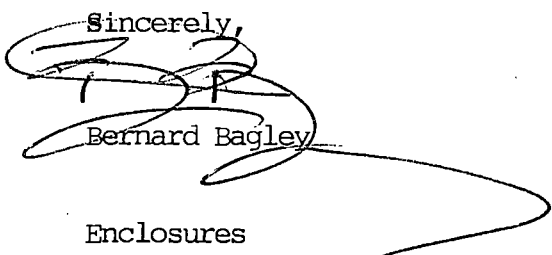
Dear Ms. Kitchings:

Enclosed for filing are the following:

1. Brief of Appellant;
2. Designation of Matter to be included in the Record on Appeal;
3. Appendix; and
4. Proof of Service for each.

Thank you for your consideration and time.

Sincerely,



Bernard Bagley

Enclosures

cc: James E. Parham, Esq.

Bernard B...
#175851-SB21B-Ker.C.I.
4848 Columbia Hwy.
Kershaw, S.C. 29067



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S.C. - COURT OF APPEALS
JAMES A. K. THOMAS, Clerk of Court
P.O. Box 11629
Columbia, S.C. 29211-1629

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