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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

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

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.

REPLY BRIEF OF PETITIONERS

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ARGUMENTS

The Petitioners contend that the Court of Appeals and the 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.

In her response brief, the Respondent describes the allocation as announced in open court as an “unsupported allegation” and even goes so far as to call that allocation as agreed to by the Respondent and Amisub as “illusory.” *See*, Respondent’s Brief, pp. 7, 12. The Respondent’s position is frankly untenable. Notably, the Respondent conceded *that very allocation* in the trial court and in the Court of Appeals, and only upon the granting of a writ of certiorari, does the Respondent now want to call that allocation “unsupported” and “illusory.” The record demonstrates that in response to post-trial motions, 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). Similarly, in its opinion, the Court of Appeals wrote: “Wife properly conceded in her memorandum in opposition to Appellants’ post-trial motion that when the settlement was announced mid-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.’” (App. 26). Moreover, during the hearing to approve the settlement, the Petitioners’ counsel pointed out to the trial court that “at the time of the settlement during the trial, the settlement was actually put on the record and allocation at that time was announced was ninety percent to loss of consortium, five percent to

wrongful death, five percent to the survival.” (R. 905). In response, 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). Importantly, none of those representations as to the allocated settlement being placed on the record was opposed or disputed by the Respondent's counsel. (R. 907).

Additionally, as the Respondent's counsel is well aware, there were tremendous problems in obtaining a complete and accurate trial transcript from the court reporter during this appeal. In its brief to the Court of Appeals, the Petitioners wrote: “The Appellants' counsel experienced great difficulty in obtaining the trial transcript, and there are numerous places where that transcript can be challenged as not being accurate or complete.” *See*, Appellants' Brief in Court of Appeals, p. 20. In its opinion, the Court of Appeals acknowledged the issues with the transcript. (App. 15-16). In fact, when addressing the placement of the allocated settlement with Amisub on the record, the Court of Appeals noted that “this discussion is absent from the trial transcript” but further pointed out that “[t]hree pages are missing at this point in the transcript.” (App. 26). The Court of Appeals also acknowledged that the Respondent made a “proper concession” as to how the allocation was announced during trial. (App. 26).

In short, as confirmed by the parties, by the trial court, and by the Court of Appeals, there was an allocated settlement between the Respondent and Amisub that was placed on the record in open court. That allocated settlement was 90% allocated to the loss of consortium claim and 5% allocated both to the survival and wrongful death claims.

In addition to disputing what she had previously conceded in the trial court and the Court of Appeals as to the allocated settlement placed on the record, the Respondent also argues that the reference to the law governing the application of Rule 43(k) was not previously asserted and

hence is not “preserved.”¹ The Respondent makes that argument despite acknowledging that Rule 43(k) was cited and discussed in the post-trial filings in the trial court. (R. 122-123). Moreover, while Rule 43(k) was not explicitly cited in the Court of Appeals briefs, the principle of law was clearly asserted. The Petitioners argued that “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 court, and the parties should be bound by that agreement.” *See*, Appellants’ Brief in Court of Appeals, p. 32.

At any rate, the rules of preservation do not preclude a litigant from providing an additional citation to a case, statute, or rule that provides further support to an argument clearly raised in the trial court and the Court of Appeals. Here, the discussion of Rule 43(k) is instructive in that it reflects the basic principle that the parties to a settlement placed on the record in open court should be bound to its terms. That is the premise at the heart of the Petitioners’ argument.

To that point, in clear derogation of that basic principle, the Respondent argues that she should not be bound to the allocation made by the settling parties at the time of the settlement and when it was placed on the record in open court. In challenging that basic principle, the Respondent relies on such cases as *Jolly v. Fisher Controls International, LLC.*, 443 S.C. 511, 905 S.E.2d 380 (2024), and *Rutland v. South Carolina Department of Transportation*, 400 S.C.

¹ As our appellate courts have stated, issue preservation “is not a ‘gotcha’ game aimed at embarrassing attorneys or harming litigants.” *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, S.E.2d 282, 285 (2012). This Court has explained: “While it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our longstanding precedent and resolve the issue on preservation grounds when it *clearly* is unpreserved.” 730 S.E.2d at 285. (Emphasis added). “[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.” 730 S.E.2d at 287. (Toal, C.J., concurring in result in part and dissenting in part).

209, 734 S.E.2d 142 (2012). However, as the Petitioners explained in their opening brief, those cases do not help the Respondent. Those cases present a scenario different from the case at bar. To recap, in *Jolly, supra*, there was *no allocation* of the settlement by the settling parties that was placed on the record or reduced to writing when the settlement was reached. *See, Jolly*, 905 S.E.2d at 395 (Kittredge, C.J., dissenting) (“the trial court inquired as to the allocation of the pretrial settlement proceeds. The Jollys admitted there was no allocation at the time of the settlement and, instead, informed the trial court that they ‘internally allocated’ the settlement proceeds”). In *Rutland, supra*, there was a “stipulated amount” allocated to the wrongful death claim which came from an agreement between the plaintiff and one of the settling defendants. However, in both *Jolly* and *Rutland*, it was a non-settling party that challenged the allocation by the settling parties, and ultimately this Court acknowledged that a non-settling party – which was not a party to the settlement – should have an opportunity post-trial to demonstrate that the “stipulated amount” was not reasonable or bona fide. This Court never ruled, however, that one of the settling parties could challenge the agreed-upon allocation post-trial and have the set-off judge apply a different allocation.

That scenario is now presented in this case. Here, the Respondent, who is one of the settling parties, is arguing that she is not bound by the allocated settlement agreed to by the settling parties and placed on the record in open court. In contrast, it is the non-settling defendants – the Petitioners -- who 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, should be binding on the Respondent as a settling party. Importantly, holding a settling party to its allocated settlement at the time of the settlement will not “dramatically alter the settlement allocation process” as the Respondent now claims in her brief. Instead, it is logical and makes

perfect sense. In sum, a settling party is bound by its stipulated allocation, while a non-settling party who is not a party to the stipulated allocation is not bound. Here, the set-offs should have been applied based on the settling parties' original agreement at the time the settlement was announced to the trial court and placed on the record in open court, and the Respondent should be bound by that allocation. The trial court, as affirmed by the Court of Appeals, thus erred in allowing the Respondent to assert a different allocation after the trial was completed.

CONCLUSION

Based on the foregoing discussion and analysis, the Petitioners Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, M.D. respectfully renews its 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 requests 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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