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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2023-CP-18-00758
Appellate Case No. 2025-000275

James Graham,
as Personal Representative of the Estate of Phyllis Chestnut,

Respondent,

v.

Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,
Fundamental Long Term Care, Inc., THI of South Carolina, LLC, THI of Baltimore, Inc.,
Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC,
Fundamental Clinical and Operational Services, LLC, Fundamental Clinical Consulting, LLC,
and Curana Health of South Carolina, P.C. f/k/a Elite Patient Care of South Carolina, PC,

Defendants,

Of which Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center,
THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC,
Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services,
LLC, and Fundamental Clinical Consulting, LLC, are the

Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

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Appellants hereby reply to Plaintiff's responsive brief.¹

ARGUMENT IN REPLY

1. **Under South Carolina law, an action for wrongful death may only be maintained when the decedent would have been entitled to maintain an action had they survived, and here it is conclusively established that the decedent, Ms. Chestnut, could not have maintained an action had she survived, because she could only have proceeded in arbitration, not in litigation.**

Whether or not it is best described as “derivative” or by some other name, there is an undeniable relationship between survival and wrongful death claims. The “statutory right . . . created by [S.C. Code Ann.] § 15-51-10 in the personal representative of the decedent . . . can only be maintained if the decedent, had he lived, could have maintained such an action.” *Quattlebaum v. Carey Canda, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988); *id.* at 940 (“The right to bring a wrongful death claim is thus conditioned upon the decedent’s right to maintain a claim or action.”). In *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 349, 699 S.E.2d 143, 146 (2010), our Supreme Court expressly found that *Quattlebaum* was “correctly decided” and rightly “adhere[d] to the principle that a decedent’s estate *may maintain an action* only when the decedent would have been entitled to *maintain an action* had he survived.” (emphasis added).

Here, we already know that Ms. Chestnut could not have maintained an action had she survived, because the survival claims have, without objection from Plaintiff, been compelled to

¹ Shorthand references already defined in Appellants’ principal brief are continued in this reply brief (e.g., “Appellants” refers to Defendant/Appellant Hallmark Long Term Care, LLC d/b/a Hallmark Healthcare Center (the “Facility”) and Defendants/Appellants THI of South Carolina, LLC, THI of Baltimore, Inc., Hunt Valley Holdings, LLC, Fundamental Administrative Services, LLC, Fundamental Clinical and Operational Services, LLC, and Fundamental Clinical Consulting, LLC (collectively, the “Other Appellants”), collectively, and “Plaintiff” refers to Plaintiff/Respondent, James Graham, as Personal Representative of the Estate of Phyllis Chestnut (“Ms. Chestnut”).

arbitration. By virtue of the same principle that our Supreme Court endorsed in *Stokes*, just as Ms. Graham could not have maintained an action had she survived, but could only proceed in arbitration, Plaintiff can only proceed with the wrongful death claims in arbitration.

CONCLUSION

For the foregoing additional reasons, Appellants ask the Court to reverse the circuit court to the extent that it denied the Underlying Motions, i.e., with respect to its denial of the Motion to Compel Arbitration and Motions to Stay as to Plaintiff's wrongful death claim, and compel Plaintiff's wrongful death claim against the Facility to arbitration and stay this lawsuit as to the Other Appellants pending the outcome of arbitration between Plaintiff and the Facility (or to remand this matter to the circuit court with instructions that it do so).

Respectfully submitted,
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