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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Eugene H. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2024-000592
Civil Action Case No. 2020-CP-02-02238

Cassiopia Rhoads .....Respondent-Appellant

v.

Aiken County Sheriff's Office .....Appellant-Respondent

FINAL REPLY BRIEF OF RESPONDENT-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

ARGUMENTS

I. THE TRIAL COURT ERRED IN FINDING THAT RHOADS' PRIOR SETTLEMENT WITH SHP SERVED TO BAR/EXTINQUISH HER CAUSES OF ACTION AGAINST ACSO, ERRONEOUSLY APPLYING THE TCA TO A NON-GOVERNMENTAL, FOR-PROFIT COMPANY AND ERRONEOUSLY DETERMINING THAT THE MEDICAL MALPRACTICE CAUSE OF ACTION AGAINST SHP AND THE GROSS NEGLIGENCE CAUSE OF ACTION WERE THE SAME OCCURRENCE.

A. ACSO'S ARGUMENTS AND THE TRIAL COURT'S RULING IGNORE CONTROLLING CASE LAW AND THE PLAIN LANGUAGE DEFINITIONS OF THE SCTCA.

ACSO acknowledges that *Wade v. Berkeley County* "remains to date the only case that interprets and applies Section 15-78-70(d)" (ACSO Initial Brief, p. 7) but ignores the legislative intent (of avoiding multiple recoveries from the government), which the Court of Appeals found behind the statute:

> Neither a "governmental entity," as defined in § 15-79-30(d), nor its insurer paid any funds for the covenant. Therefore, ***this case does not present a question of double recovery against a governmental entity***.

Id., 339 S.C. 513, 527, 529 S.E.2d 743, 750, *aff'd in part and rev'd in part* (Ct. App. 2000) (emphasis added). The Court specifically noted that the prior settlement agreement (which was not with a governmental entity) was not made under the South Carolina Tort Claims Act ("TCA"), stating that "the document executed by Wade is not 'under this chapter.'" *Wade* at 526, 750, (emphasis in original). [1] Similarly, the settlement documents Rhoads executed with SHP were not under the TCA, as they were executed solely with a non-governmental, for-profit corporation—*i.e.* Southern Health Partners. Just as in *Wade*, since no "governmental entity" or its insurer has

[1] In *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), the South Carolina Supreme Court affirmed in part and reversed in part the decision by the Court of Appeals. The Supreme Court reversed only the lower court's finding that a "Covenant not to Execute" was not a settlement. Thus, the Court of Appeals' instruction on the legislative intent of S.C. Code § 15-78-70(d) was affirmed in its finding that the purpose behind 70(d) is to prevent double recovery against the government.

paid any funds to the plaintiff, this case also "does not present a question of double recovery against a governmental entity."

ACSO agrees that Southern Health Partners was an "independent contractor" and repeatedly referenced this as being an "undisputed" fact:

> The definition of the word "employee" excludes independent contractors, so I don't even have to get an immunity defense. It's simply they're not our employees, and they certainly haven't – that's an undisputed fact in this particular case. So ultimately, we're not responsible for vicarious, direct, any way we're not responsible for the acts or omissions of Southern Health Partners.

(R. Vol. III p. 1305, line 23 – p. 1306, line 5).

ACSO went so far as to argue to the Trial Court that it was "irrelevant" whether SHP had been negligent because its healthcare providers were "independent contractors" for the jail:

> And as Your Honor well knows, liability ***under the tort claims act*** ***is limited to the actions of employees, not independent contractors, but employees***. So ultimately, in this particular case, ***it is absolutely irrelevant*** **as to whether or not Dr. Williams and the various nurses working for Southern Health Partners violated any medical or nursing standards of care.**
>
> As ***what is relevant*** is ultimately ***whether or not the correctional officers violated some legal duty***, as we've discussed completely.

(R. Vol. III pp. 1029, lines 7-16) (emphasis added). By ACSO's own admission, SHP was statutorily barred from receiving the protections of the TCA. *See also* S.C. Code §15-78- 30(c) (defining "employee" as not including an independent contractor); S.C. Code §15-78-30(d) (defining "governmental entity" as the State and its political subdivisions); S.C. Code §15-78- 70(a) (proving that the SCTCA is "the exclusive remedy for any tort committed by an employee of a governmental entity."). The fact that SHP was an independent contractor surely led ACSO to assert to the Trial Court that SHP could not be held liable "***under the tort claims act***," and that Rhoads' previously settled claims against SHP (for having violated the medical standards of care) were "irrelevant".

As discussed above, ACSO acknowledges that Rhoads' settlement with SHP was/is barred from falling "within" the scope of the TCA by virtue of the statute's plain language defining "employee." With the South Carolina Supreme Court having found that the phrase "under this chapter"—as used in S.C. Code § 15-78-70(d)—"means ***within*** the South Carolina Tort Claims Act," Rhoads' settlement with SHP patently could not have been "within" the TCA. *Wade* at 229, 559 S.E.2d at 588.

In an effort to contort the scope of the TCA so as to apply to the settlement with SHP, ACSO argues that the term "action" means any aspect of a lawsuit, such that if a settlement occurs with any party, at any point of a lawsuit, it triggers Section 15-78-70(d), regardless of whether the settled claims even could have been brought under the TCA. This argument ignores one of the central points in *Wade*—that the "action" was "the same action." ACSO's attempt to distinguish *Wade*, that there were not "separate suits filed," is simply inaccurate. (ACSO Initial Brief, p.8).

> Wade and Pierce executed a "Covenant Not to Execute Judgment"…Wade then ***amended his complaint***, deleting Pierce as a defendant and naming County as the party defendant.

Wade at 226, 559 S.E.2d at 586-587 (emphasis added). In *Wade,* the lawsuit that was allowed to proceed by both the Court of Appeals and the Supreme Court was all ***the same civil action***.

ACSO's position would create absurd and untenable results. Consider, for example, a three-vehicle crash, wherein Vehicle 1 contains a private citizen driver (Plaintiff A) and his passenger (Plaintiff B). Further, presume Vehicle 2 is operated by a potentially at-fault private citizen (Defendant A), and Vehicle 3 is a garbage truck owned by a municipality (Defendant B) and being driven by a governmental employee (and thus, under the TCA, only the municipality could be sued for his alleged negligence). Plaintiff A and Plaintiff B might bring a lawsuit as co-plaintiffs, or they might file separate lawsuits but, as a consequence of a motion from the defendants, have the court consolidate the cases into one civil action under Rule 42, SCRCP,

involving a common question of law or fact. Should Plaintiff A happen to settle her claims against Defendant B, under ACSO's assertion of how Section 15-78-70(d) should be interpreted, this would not only extinguish her claims against Defendant A, but it would also extinguish Plaintiff B's claims against both Defendant A and Defendant B. This is not and cannot be the law of South Carolina.

If the *sine qua non* of S.C. Code § 15-78-70(d) were simply that a settlement arose out the same lawsuit, then the Supreme Court in *Wade* would have barred Wade from pursuing his causes of action against Berkeley County via his amended complaint.[2]

Similarly, if the only prerequisite for applying 15-78-70(d) was a settlement arising from the same lawsuit, the Legislature would not have included the phrase "by reason of the same occurrence" in the statute. Courts are required to read statutes so "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). The core principle of ACSO's argument was rejected in *Wade*, and it should be rejected here as well.

B. ACSO'S ARGUMENTS AND THE TRIAL COURT'S RULING IGNORE CONTROLLING CASE LAW ON THE DEFINTION OF "OCCURRENCE" AND THE ROLE OF THE JURY IN DETERMINING THAT QUESTION OF FACT.

The plain language of Section 15-78-70(d) makes clear that it does not bar a plaintiff from pursuing an action or claim under the TCA against a governmental entity for an occurrence of negligence/gross negligence that is separate from an occurrence that has been settled. Despite ACSO's assertions to the contrary, the acts/omissions of gross negligence by ACSO's deputies

[2] In refusing to rule in similar fashion to the Trial Court on this issue, the Supreme Court specifically noted the same "must be liberally construed" language of the TCA (§15-78-200) that ACSO argues supports this interpretation and application of S.C. Code § 15-78-70(d). *Wade* at fn.3 and fn.4.

would have been a separate occurrence from any medical negligence committed by SHP's healthcare providers.[3]

ACSO quotes the Trial Court's Order that "the liability of all Defendants was inextricably linked, and as a result … the liability of the SHP Defendants and the Sheriff's Office arose out of the same occurrence, thereby making Section 15-78-70(d) applicable." (ACSO's Initial Brief, p. 12). Importantly, ACSO has admitted that Rhoads' action against SHP was for medical malpractice:

> So what they have sued for – originally **the suit was against Southern Health Partners *for medical malpractice***. As your Honor is aware, that is now settled out [….]
>
> What this case is about is the plaintiff was receiving medical care that she believes was ***a violation of the standard of care and constituted medical malpractice*** by Southern Health Partners. And ultimately, ***that's why they were sued and ultimately settled out of this case***. But there's no evidence of gross negligence, Your Honor, on the part of the Aiken County Sheriff's Office employees in this particular case.

(R. Vol. II p. 734, lines 19-22, p. 750, lines 8-16) (emphasis added). Undoubtedly, the case/claims against ACSO were not rooted in medical malpractice since ACSO's correctional officers were not licensed nor able to practice medicine or nursing. While examining Dr. Edward O'Bryan, an internal medicine expert, ACSO emphasized that the case being tried was ***not*** a medical malpractice case:

> MR. LINDEMANN: You're ***not*** testifying as a medical expert ***in a medical malpractice case*** either, though ***are you***?
>
> DR. O'BRYAN: ***No***, in medical practice in general.

[3] As one considers this issue, it is important to keep in mind that determining occurrences is typically a question of fact for the jury to decide. *See eg. Boiter v. S.C. Dep't of Transp.*, 393 S. C. 123, 125 (2011); *Chastain v. Anmed Health Found.*, 388 S.C. 170, 174, 694 S.E.2d 541, 543 (2010) ("more than one single act of negligence" constitutes multiple occurrences); *see also Boggero v. S.C. Dep't of Rev.*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015) ("whether the facts of a case were correctly applied to a statute is a question of fact").

(R. Vol. III p. 1115, lines 1-3) (emphasis added).[4]

Apparently, ACSO no longer finds SHP's liability "irrelevant." Instead, ACSO now quotes the Trial Court's Order that the gross negligence of ACSO was part of the same "unfolding sequence of events proximately flowing from the acts or omissions by the SHP Defendants in the provision of medical care." (ACSO's Initial Brief, p. 13, citing to Order at p. 8). Specifically, ACSO argues that "from a causation standpoint, if the medical care provided by the SHP Defendants had met the standard of care and the Plaintiff had been properly cared for, there would have not been a breach of duty on the part of the Sheriff's Office" (ACSO's Initial Brief, p. 14, citing to Order at p. 8). This "but for" reasoning is inconsistent with how South Carolina courts have determined occurrences under controlling case law.

The facts and holding of *Boiter* do **not** support the conclusion that there can only be one occurrence merely because an initial occurrence of negligence was a factual predicate for a subsequent occurrence of gross negligence.

In Boiter, the Supreme Court described the factual scenario as "a classic case of two occurrences." *Boiter* at 132, 712 S.E.2d at 405. There, the South Carolina Department of Transportation ("SCDOT") failed to implement a re-lamping policy to replace traffic light bulbs before they burned out, and after being informed that a traffic bulb had burned out at a particular intersection (where the Boiter's automobile collision would later take place), the South Carolina Department of Public Safety ("SCDPS") failed to dispatch a trooper to direct traffic. *Id.* at 126, 712 S.E.2d at 402. But for SCDOT's failure to implement a re-lamping policy (and thus always having traffic-lights with working bulbs), there would have been no need for SCDPS to direct

[4] Notably, ACSO was allowed to cross-examine Dr. O'Bryan about the fact that he had originally issued a report against SHP, stating the opinion that SHP was "guilty of medical malpractice." (R. Vol. III p. 107, lines 14-17; pp. 1079-1081; pp. 1108-1111).

traffic, and its failure to send a trooper would have never arisen. This, however, did not prevent the finding of a "classic case" of two separate occurrences of negligence.

If the Trial Court's ruling was correct, the *Boiter* court would have held that SCDPS's failure to send a trooper to direct traffic at the intersection of the burned-out traffic light was merely an unfolding sequence of events proximately flowing from SCDOT's failure to have an appropriate re-lamping policy in place. But that is **not** what the Supreme Court found in *Boiter*:

> We are persuaded ***that two independent and separate acts of negligence occurred here – one by SCDOT and one by SCDPS***. ***There is no indication that the Respondents' actions combined to form a single act of negligence***. Unlike the situation presented in *Chastain*, we have two separate and distinct acts of negligence involving two separate and distinct entities with separate verdicts against each of them. As found by the jury, SCDOT was negligent in not having a re-lamping policy in place, and SCDPS was negligent in not following its own policy to notify a SCDOT technician when a light had burned out. ***Based on the facts presented here, we cannot see how SCDOT's negligent act "unfolded" into SCDPS's negligent act***. SCDPS only became involved due to a citizen call regarding the burned-out light bulb; SCDOT never called SCDPS regarding the light, and SCDPS never informed SCDOT about the citizen call. ***We can find no causal connection between the actions of SCDOT and SCDPS; had the jury not found SCDOT negligent, the verdict against SCDPS could still stand, and the converse is also true. Therefore, we do not believe that these two separate and independent acts of negligence constituted an unfolding sequence of events*** which injured the Boiters.

Id. at 134, 712 S.E.2d at 406-07 (emphasis added).

Boiter makes clear that whether two acts/omissions of negligence are "inextricably linked" is not the determinative question when assessing whether multiple occurrences exist. If ACSO and the Trial Court were correct, the *Boiter* Court would not have found "a classic case of two occurrences." After all, how could SCDPS' failure ***not*** be "inextricably linked" to the prior failure by SCDOT? There would never have been a need to direct traffic at a dark intersection had SCDOT maintained a re-lamping policy to replace bulbs in traffic signals before they burned out, just as if "the medical care provided by the SHP Defendants had met the standard of care and [Rhoads] been

properly cared for, there would have been no breach of duty on the part of the Sheriff's Office." Order, p.8.

The *Boiter* Court specifically held that it "cannot see how SCDOT's negligent act 'unfolded' into SCDPS' negligent act"—although the first must necessarily have happened for the second to have been possible, they are still not the same occurrence. The same is true in this case. SHP's negligence in failing to meet the standard of care as a medical provider is akin to SCDOT's failure to meet their duty of care by implementing a re-lamping policy. ACSO's failures are akin to SCDPS' failures.

The occurrences presented to the jury in this case of ACSO's gross negligence causing proximate harm to Rhoads were:

> **Occurrence No. 1:** Deputy Carla Hill was told by the detention center's medical staff that they had determined self-harm to be the reason for Rhoads' massively swollen head—which is to say that the medical staff believed Ms. Rhoads was intentionally banging her head against the wall, her bunk, a sink, or some other hard object. Dep. Hill's own testimony demonstrated that she believed this to be inaccurate and undertook to ask other correctional officers, as well as Rhoads' fellow inmates, if they had seen Rhoads inflict self-harm. Dep. Hill testified that all of these inquiries came back in the negative—that no one had seen or had any reason to believe that Rhoads was self-harming. Deputy Hill testified that she took this information to her supervisor, Lieutenant Jessica Whitaker. However, there was no evidence that Lt. Whitaker did anything with this important information or otherwise undertook to correct the medical staff's misinformation. Upon learning that the basis for the medical staffs' diagnosis was incorrect (that they believed Rhoads' swollen head to be the result of self-harm when, actually there was no self-inflicted injury), it was incumbent upon Lt. Whitaker to see that the medical staff was made aware of this information so that they could incorporate it into their diagnosis and prescribe a course of treatment that correctly reflected what was actually occurring. (R. Vol III pp. 1166-1173). Rhoads submits that this response (or lack thereof) by Lt. Whitaker was gross negligence.
>
> **Occurrence No. 2:** Deputy Kimberly Kelley grew gravely concerned about Rhoads' health during the detention at issue. Dep. Kelley testified that Rhoads was visibly very ill and, even as a layperson, could tell that she required much more medical treatment/care than what the detention center's medical staff was providing. Dep. Kelley described how incredibly sick Rhoads appeared and her fear that she would die in the detention center if additional medical

treatment was not arranged. Dep. Kelley testified that she took these concerns to her supervisor, Lieutenant Erik Riddell. Further, she testified that Lt. Riddell responded by telling her, "stay in your lane," and effectively rejected her concerns outright. Dep. Kelley testified that Lt. Riddell's negative response to her concerns was so intense that she feared for her job security if she pushed the matter any further or went above Lt. Riddell on the chain of command. Upon learning of Dep. Kelley's concerns about Rhoads' health, it was incumbent upon Lt. Riddell to make a reasonable inquiry into the validity of these concerns and to discuss these concerns with the medical staff (and, if necessary, his supervisors) so that they could take any action necessary. (R. Vol III pp. 1212-1254). Rhoads submits that this response (or lack thereof) by Lt. Riddell was gross negligence.

Occurrence No. 3: Captain Nicholas Gallam testified that one of the reasons the detention center's administrative staff (such as himself) were contemporaneously unaware of any concern about Rhoads' health was because she didn't complete an "administrative grievance" on the jail's computer kiosk system. Capt. Gallam testified that if Rhoads had gone to the kiosk and clicked a particular drop-down box and navigated to a specific page to complete a particular administrative grievance form (different than the form about needing medical attention), he would have been made aware of the concern that the medical staff was not providing appropriate care and that she was gravely ill. Additionally, Capt. Gallam talked about the one-page document (printed both front and back) entitled "Inmate Rules and Regulations," which would have been provided to Rhoads at the time she was booked in the jail and that he claimed explained this process about "administrative grievances." However, a look into this document (R. Vol III pp. 1804-1805) demonstrates that the administrative process had a level of complexity that for a layperson— let alone someone like Rhoads, who lacked in education and was also suffering from an infectious process invading her brain—would be difficult to understand. Capt. Gallam also testified that when one does not have access to the kiosk system (which would include Rhoads at the point she was placed in B-Max on May 24th), paper forms can be made available to detainees to complete grievances. Seemingly, Capt. Gallam was saying that he blamed Rhoads for not going through what he considered the proper channels and implying that, had she done so, he would have taken action about her need to be seen at a hospital. However, the evidence demonstrated that the "boots on the ground" deputies were untrained or otherwise unaware of this administrative grievance process, for even the correctional officers who were concerned about Rhoads' health and were trying to advocate for her (including Deputies Hill and Kelley) never informed Rhoads about this complicated process regarding how to navigate through the morass of the kiosk computer system to file an administrative grievance, nor did they offer to provide her with physical paperwork to enter a grievance. (R. Vol IV pp. 1433-1503). Rhoads submits the ACSO's creation of an absurdly complicated and difficult to navigate administrative grievance filing process (including an informational form in 8-point font), coupled with a failure to train its

> employees as how the administrative grievance process operated or to inform detainee Rhoads about the process, was gross negligence.

Just because both ACSO's failures and SCDPS' failures in *Boiter* followed initial failures by another tortfeasor does not mean those subsequent failures must "unfold" and proximately flow from those initial failures.

Any one, a combination, or all of the grossly negligent acts/omissions delineated above could have been the basis for the jury's verdict finding in Rhoads' favor; and all are independent and separate from any occurrences of medical malpractice by SHP's medical providers. Because any of these grossly negligent acts/omissions involve duties that the ACSO's correctional officers owed to Rhoads (and breached) and are sufficient to sustain a jury verdict against ACSO that could stand alone from any alleged medical malpractice by SHP, they cannot be part of the same occurrence, as defined by S.C. Code §15-78-30(g), or as clarified by *Boiter*.

Applying the *Boiter* rules to this case, if the allegations of medical negligence brought against SHP's healthcare providers had been put before a jury,[5] the jury may have found that their acts and omissions did not fall below the standard of care. The jury may have determined that, although the medical decisions made by the doctor and nurses ultimately proved to be incorrect in hindsight, their actions did not fall below the standard of care expected of reasonable and prudent healthcare providers in similar circumstances. The jury could have determined that the only (grossly) negligent actors were ACSO's officers for one or more of the occurrences described above. To put it as the *Boiter* Court did: ***Had the jury not found SHP negligent, the verdict against ACSO could still stand, and the converse is also true.***

ACSO states that Rhoads argues "the [70(d)] defense should have been submitted to the jury in this case." (ACSO's Initial Brief, p. 15). **Rhoads has made no such argument.** What

[5] These claims were settled between the parties.

Rhoads has asserted, as stated above, is that the issue of determining occurrences is typically an issue that is determined by the jury. However, as discussed below, considering the facts and procedural posture, there was no need to include such a specific interrogatory on the verdict form.

By virtue of a stipulation by the parties and the explicit jury instructions given by the Trial Court, the verdict in this case **was** a determination by the jury that ACSO's gross negligence was separate and independent from any medical malpractice that may have been committed by SHP. (Rhoads' Initial Brief, p. 27-30). While ***agreeing*** to the Trial Court instructing the jury in this regard, instead of an actual publishing of the stipulation, counsel for ACSO stated:

> MR. LINDEMANN: …I'm fine with that as well, Your Honor. Like I said, I didn't know what the charge would be, so I didn't want to rest and not at least have a chance to use it this was.
>
> THE COURT: I'd rather do it that way.
>
> MR. LINDEMANN: All right. I just want to ***make sure the jury understands that they are not suing us for what Southern Health Partners did***. That's a pretty important thing for them to understand.

(R. Vol IV pp. 1653, lines 3-12, emphasis added).

Our Supreme Court has specifically held that if a plaintiff "alleges multiple occurrences, that is, more than one single act of negligence from which proximately flowed an unfolding sequence of events, the plaintiff bears the burden of proving each occurrence." *Chastain v. Anmed Health Found.*, 388 S.C. 170, 174, 694 S.E.2d 541, 543 (2010). The Court noted that the jury in *Chastain* "was never instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict." *Id.* at 174, 694 S.E.2d at 543. This is not the case in the matter at bar where the jury was specifically instructed that any occurrence by Aiken County Sheriff's Office was separate and independent from SHP occurrences. The Trial Court explicitly instructed the jury that their "only" job was to determine the liability of ACSO and that liability could **not** arise from any acts/omissions of SHP:

> I further instruct you that the defendant, the Aiken County Sheriff's Office, is ***not liable for any acts or omissions constituting medical malpractice or medical negligence committed by Southern Health Partners, their doctors or their nurses in the diagnosis and care provided to the plaintiff***. ***That means that your verdict cannot be based upon any acts or omissions committed by the Southern Health Partners and doctors***. Your only call here in this case is to determine the liability of the employees of the Aiken County Sheriff's Office.

(R. Vol III pp. 1671-1672, emphasis added).

The jury was also explicitly instructed that ACSO **"is not liable unless the Aiken County Sheriff's Office actions alone would have caused the plaintiff's injuries, even without the intervening acts or omissions of the third party."** (R. Vol. IV pg. 1666, lines 2-5).

Jurors are presumed to follow the law as instructed/given to them. *State v. Grovenstein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999); *Richardson v. Marsh*, 381 U.S. 200, 206 (1987) ("This accords with the almost invariable assumption of the law that jurors follow their instructions, which we have applied in many varying contexts…"); *United States v. Benson*, 957 F.3d. 218, 230 (4th Cir. 2020) (holding that to overcome the *Richardson* assumption that jurors follow their instructions, appellants would have to demonstrate, in part, that the jury was unable to follow the court's instructions).

Based on those explicit instructions, both parties argued to the jury in closing arguments that ACSO's liability was wholly separate and independent from SHP's liability. ACSO argued to the jury:

> In fact, the judge will, I believe, charge you that South Carolina law authorizes the use of a medical contractor. And he will also, I believe, charge you that the sheriff's office is not liable, is not responsible legally, for any types of acts or omissions or mistakes that Southern Health Partners made. We're not responsible for what Southern Health Partners did[….]
>
> And unfortunately, something did happen here. But again, it's not because of the correctional staff. It's because the medical providers made errors, and we're not liable for the medical providers. The judge is going to charge you that. It's going to be very important to keep that straight.

(R. Vol. IV pp. 1605, lines 8-15; p. 1632, lines 20-25).

Rhoads argued to the jury:

> We are not, by any means, saying that Southern Health Partners didn't screw up, but that's not what this case is about. That's a different matter to be decided somewhere else. This is about what the guards should do. Oh, I got ahead of myself. Let me say again, the medical providers at the jail, third party, no doubt about it, hired by the government, but they were a third-party. The folks they chose royally, royally screwed up. Holey moley, they screwed up.

(R. Vol. IV pp. 1571, lines 10-18).

As Rhoads previously asserted, based on the evidence, arguments and jury instructions at trial:

> The jury was repeatedly instructed that ACSO could not be held liable for the negligence of SHP's employees and then took less than an hour to determine that ACSO's employees had been grossly negligent in their separate and distinct acts/omissions relating to Rhoads.
>
> The Trial Court's finding that, as a matter of law, SHP's medical malpractice negligence was the same occurrence as ACSO's gross negligence, invades the province of the jury by vacating the jury's decision that necessarily found ACSO's gross negligence was a separate and distinct occurrence from SHP's medical negligence.

(Rhoads' Final Brief, p. 29-30).

In short, the Trial Court's decision to reverse course and find that S.C. Code § 15-78-70(d) barred prosecution of Rhoads' causes of action against ACSO ignored the specific instructions it had charged the jury with, and "the invariable assumption of the law" that the jurors followed those instructions. By doing so, the Trial Court improperly substituted its own judgment for that of the jury on a factual issue—declaring there was only one occurrence.

II. THE TRIAL COURT'S ORDER AND ACSO IGNORE THAT THE "LOSS OF APPORTIONMENT" ARGUMENT IS NOT SUPPORTED BY CONTROLLING CASE LAW.

ACSO argued, and the Trial Court agreed, that § 15-78-70(d) had to be read *in pari materia* with §15-78-100(c), and in doing so supports the application of § 15-78-70(d) to bar Rhoads from

pursuing her causes of action against ACSO, because the right to apportioned fault under § 15-78-100(c) would be otherwise lost.

The TCA requires a special verdict form if a case is submitted to a jury with multiple defendants:

> In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.

S.C. Code § 15-78-100(c) (emphasis added). Pertaining to this statute, the Trial Court ruled:

> Section 15-78-100(c) requires that a jury return a special verdict specifying the proportional liability of each joint tortfeasor, both governmental and non-governmental. The reason for this is clear and supported by constitutional principles: the government and the taxpayers are not jointly and severally liable and instead are only liable for their own proportioned share of liability. The right to apportioned fault under Section 15-78-100(c) is lost, however, if a joint tortfeasor is able to settle out of litigation. That is the reason that Section 15-78-70(d) was enacted and must be read *in pari materia* with Section 15-78-100(c). Contrary to the Plaintiff's argument, the General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment.

(R. Vol. I pg. 24).

Despite asking the Trial Court, and now this Court, to interpret and apply §15-78-70(d) *in pari materia* with §15-78-100(c), ACSO argues that Rhoads reliance on cases addressing similar "loss of apportionment" arguments under §15-78-100(c) are "misplaced." (ACSO Initial Response brief, Sec. B).

A-well settled line of cases eviscerates ACSO's argument. The fact that *Rutland v. South Carolina Dept. of Transp.*, 400 S.C. 209, 734 S.E.2d 142 (2012), did not expressly address S.C. Code § 15-78-70(d) does not change the legal principle—recognized by both this Court and the Supreme Court—that the application of set-offs serves the same purpose as a special verdict form

in apportioning liability when a TCA defendant is pursued after a non-TCA defendant has settled.

Similarly, the fact that *Chester v. S.C. Dep't of Pub. Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010), did not reference 70(d) does not change the Supreme Court's clear holding that the enactment of Section 15-78-100(c) was never intended to force plaintiffs to choose between settling with some defendants and forfeiting their right to sue a TCA defendant, or go to trial against all joint tortfeasors. *Chester* at 346, 698 S.E.2d at 560.

Likewise, the fact that *Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000), did not discuss 70(d) does not undermine this Court's agreement with the Trial Court that S.C. Code § 15-78-100(c)'s special verdict form requirement was inapplicable "in a case such as this where only one named defendant was before the jury." *Smalls* at 218, 528 S.E.2d at 687.[6]

ACSO has consistently argued the apportionment provision of § 15-78-100(c) in support of its interpretation of § 15-78-70(d), an argument the Trial Court adopted. *Rutland*, *Chester*, and *Smalls* all show that the "loss" of apportionment under 100(c) is not "critical" and thus does not support that interpretation of § 15-78-70(d). This conclusion is further supported by former Supreme Court Justice Hearn, writing then as a Court of Appeal Judge, noted in her concurring opinion in this Court's *Wade* decision:

> Moreover, there is absolutely no suggestion that Wade was attempting a double recovery in this case. At oral argument, Wade's counsel conceded that **any recovery against the County would be offset by his settlement with Pierce**. Cast against these peculiar facts, the majority correctly holds that Wade's actions did not constitute a settlement "under the Act."

Wade v. Berkeley County, 339 S.C. 513, 529, 529 S.E.2d 743, 752 (Ct. App. 2000) (emphasis added).

[6] As discussed in Rhoads previous brief, *Rutland, Chester,* and *Smalls* all involved claims being resolved and further actions being pursued against TCA defendants.

As documented via the Trial Court's original post-trial Order, Rhoads agreed ACSO was entitled to a set-off and the Trial Court originally issued an order apply such a set-off. (R. Vol. I pp. 4-12).

III. ACSO IGNORES THE PROCEDURAL HISTORY OF THIS APPEAL IN ATTACKING RHOADS REFERENCE TO THE *CROW v. HUNT* CASE.

ACSO's attack on Rhoads with regard to a request to include a court order falling outside the Trial Court's record is unnecessary and disloyal to the procedural record and history of this appeal. (ACSO's Initial Response Brief, pp. 18-19). Rhoads' initial brief in this matter was filed on March 24, 2025. On that very same day, Rhoads also filed a *Motion to Include in Record on Appeal New Matter Not Originally Presented to the Trial Court*. This Court did not rule on that motion until it issued an order denying Rhoads' motion on June 20, 2025.

Even though the Court of Appeals' ruling had not yet occurred at the time Rhoads' initial brief was filed back in March, ACSO chastises Rhoads and accuses her of violating an order that did not yet exist. Four days after the Order was issued by this Court denying Rhoads' motion to include the *Crow* case material in the record, ACSO filed a brief containing an entire section that rather venomously accused Rhoads of violating this Court's Order stating such things as:

> …Rhoads thumbs her nose at this Court's denial of her motion seeking to supplement the Record on Appeal with a copy of the order approving the settlement of the *Crow* case. That motion was denied by this Court's order filed June 20, 2025. Nonetheless, Rhoads still cites to the *Crow* order…

(ACSO's Initial Reply Brief, p. 18-19). Given the timing of the motion, briefing, and subsequent denial of the motion, ACSO's criticism is unfounded.

ACSO's entire "Section C" ignores the procedural history of this appeal and is, quite simply, a disappointing attempt to cast Rhoads in a negative light through unwarranted hyperbole.

CONCLUSION

Rhoads' prior medical malpractice settlement with the private, for-profit medical company operating as an independent contractor at the Aiken Couty Detention Center does not serve to extinguish her claim against ACSO. The Trial Court erred in applying S.C. Code § 15-78-70(d), vacating the jury's verdict, and granting a JNOV and dismissal of Rhoads' claims against ACSO. The Trial Court's order from August 19, 2024, should be reversed and the jury verdict reinstated.

Respectfully submitted,

s/ *Francis M. Hinson, IV*

November 10, 2025
Columbia, SC

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Eugene H. Griffith, Jr., Circuit Court Judge

Case No. 2020-CP-02-02238

Appellate Case No. 2024-000592

Cassiopia Rhoads ..... Respondent-Appellant,

v.

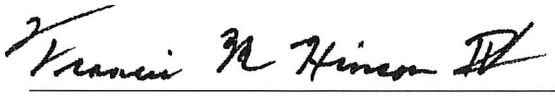
Aiken County Sheriff's Office ..... Appellant-Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Respondent–Appellant Rhoads' final briefs comply with Rule 211(b), SCACR, but would note that, in an effort to comply with the Court's order from June 20, 2025 (denying Respondent-Appellant's motion to include, within the record on appeal, a new matter not originally presented to the lower court), with the FINAL BRIEF OF THE RESPONDENT–APPELLANT: (1) paragraph of argument has been removed from pages 34-35, (2) the accompanying footnote (no. 14) was edited to explain the removal; and (3) references to "new" materials were deleted from the "Other" section of the Table of Authorities.

<signature on page following>

Respectfully submitted,



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