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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2025-000046

Pennie Wolfe, as Personal Representative
of the Estate of Jason Wolfe, Plaintiff, Appellant,

v.

Anderson County Sheriff's Office and
Security Transport Services, Inc., Defendants,

Of Which Anderson County Sheriff's Office is the Respondent.

PETITION FOR REHEARING OR REHEARING *EN BANC*

Pursuant to Rules 219 and 221(a), SCACR, as well as all other applicable law, Appellant Pennie Wolfe ("Wolfe"), as Personal Representative of the Estate of Jason Wolfe, respectfully seeks an order granting rehearing or rehearing *en banc* in this matter, submitting the within memorandum in support of the same.

ARGUMENT[1]

A panel of this court has affirmed the lower court's order granting summary judgment to Anderson County Sheriff's Office. In so doing, it ignores or misapprehends arguments made by Appellant, misapplies the law, and unfairly and punitively punishes a widow for not immediately pursuing claims in the aftermath of the death of her husband. As a result, the court's decision serves to prevent Appellant from uncovering why one law enforcement officer prepared a medical report that contradicted everything Jason told another law enforcement officer only moments earlier, which resulted in Jason being deprived of medical attention while housed at the Anderson County Detention Center.

1. **The contents of Liu's affidavit and the insufficiency of the affidavit were squarely before the circuit court, meaning those issues were properly preserved for appellate review.**

Our Supreme Court has stated the "civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party..." *Elam v. SCDOT*, 361 S.C. 9, 602 S.E.2d 772 (2004). Consistent with this position, our courts have consistently held that no magic words are required to be said in order that an issue be preserved for review. *See e.g. Toole v. Toole*, 260 S.C. 235, 240, 195 S.E.2d 389, 390-91 (1973); *State v. Russell*, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (issue was preserved even though defendant did not use the exact words "corpus delecti" in his request for directed verdict); *In re: Robert D.*, 340 S.C. 12, 530 S.E.2d 137 (Ct. App. 2000) (although party did not specifically mention any constitutional provisions to the trial court, the record reflected that he complained the testimony would violate his right of confrontation), overruled on other grounds by *State v. Liverman*, 398 S.C. 130, 727 S.E.2d 422 (2012).

[1] Wolfe's briefs are incorporated herein by reference.

The contents of Dr. Liou's affidavit were squarely before the circuit court. In fact, Respondent's counsel **conceded at the hearing** that Dr. Liu lacked personal knowledge of the contents of his affidavit: "Mr. Liu, or Dr. Liu, I'm sorry, **did not personally treat the Plaintiff but reviewed the medical records from his incarceration**" [ROA, p. 31]. The arguments presented on behalf of Appellant dovetailed with this concession by pointing out that Dr. Liu's commentary only related to treatment provided by Mediko staff and did not address any actions taken (or not taken) by Respondent [ROA, p. 39].

Under Rule 56, SCRCP, "the party seeking summary judgment has the initial responsibility of demonstrating the absence of any genuine issue of material fact." *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545-46 (1991). "The party seeking summary judgment has the burden of clearly establishing by the record properly before the court the absence of a triable issue of fact." *Owens v. Magill*, 308 S.C. 556, 562, 419 S.E.2d 786, 790 (1992). "A party who fails to show the absence of genuine issue of material fact is not entitled to summary judgment even though his adversary does not come forward with opposing materials." *Standard Fire v. Marine Contracting*, 301 S.C. 418, 421, 392 S.E.2d 460, 462 (1990).

By arguing the Liu affidavit fails to address actions taken by Respondent, Appellant plainly raised the sufficiency of the affidavit in meeting Respondent's initial burden on a summary judgment motion. In addition, Appellant pointed out that Respondent's argument totally ignored the evidence relating to the actions of its employees, which evidence liability: "[W]hat forms the basis of the claim against [Respondent] are [Respondent's] records." Further, Respondent's concession of the inadequacy of the affidavit was sufficient to put the issue before the court, making it preserved for appellate review.

In addition, this court's determination that "the evidence supported only that ACSO did not engage in gross negligence" is based entirely upon the actions taken by Mediko's staff and ignores how ACSO's employee wholly abandoned his obligation to record correctly Jason's medical history. As demonstrated by the ACSO mental health screening records, a clinical assessment should have been performed [ROA, pp. 61-62]. That one was not performed is directly a result of ACSO's failure to document properly Jason's medical condition at intake. Therefore, it is immaterial that Jason left Respondent's custody before a "scheduled mental health exam could occur," because that would have applied only to inmates whose intake forms showed mental illness—and Jason's did not.

The court's decision would allow any governmental entity to avoid any liability by simply outsourcing activities. That is not the law and it is error to examine Respondent's duty solely under the prism of the actions of a nurse or doctor. Respondent's duties are separate and distinct and they must be analyzed as such.

Finally, the court misapplies the law regarding timing for discovery, which is demonstrated by the case the court cites. In *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991), our Supreme Court held that a summary judgment granted more than three years after suit was filed was **premature** because the Plaintiff had not yet had a full and fair opportunity to conduct discovery. Accordingly, under the factual circumstances presented here, it is obvious an opportunity for full and fair discovery had not yet occurred, particularly in light of Respondent's reliance upon an unidentified expert witness in support of its summary judgment motion.

CONCLUSION

For the reasons stated herein, Appellant seeks a rehearing of the appeal in the within matter.

Respectfully Submitted,

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PROOF OF SERVICE

The undersigned certifies that he has served the within Petition for Rehearing or Rehearing *en banc* on Respondent Anderson County Sheriff's Office via electronic mail to counsel's email address on file with the South Carolina Attorney Information System (AIS) on February 19, 2026.

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