

RECEIVED

May 12 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Opinion No. 6115 (S.C. Ct. App. filed July 9, 2025)
Appellate Case No. 2025-002144

Paul David Hess, APRN-BC,..... Respondent-Petitioner

v.

Morphis Pediatric Group of Lancaster, P.A.; Elizabeth J.
Morphis, M.D.; Gregory M. Alexander, CPA; and
Moore Beauston and Woodham, LLP,..... Defendants

Of whom Morphis Pediatric Group of Lancaster, P.A. and
Elizabeth J. Morphis, M.D. are..... Petitioners-Respondents

RESPONDENT-PETITIONER’S RESPONSE TO AMICUS BRIEF

David E. Rothstein, SC Bar No. 66295
BURNETTE, SHUTT & McDANIEL, P.A.
415 W. Washington Street
Greenville, SC 29601
(803) 904-7928 (direct)
Attorney for Respondent-Petitioner

INDEX

Table of Authorities..... ii

Response to Arguments by Amicus..... 1

1. THE AMICUS BRIEF OF THE SOUTH CAROLINA ASSOCIATION FOR JUSTICE IS A THOROUGH AND THOUGHTFUL DEFENSE OF THE JURY’S IMPORTANT ROLE IN RESOLVING DISPUTES OF FACT ON CRITICAL ISSUES INVOLVING THE STATUTE OF LIMITATIONS, INCLUDING THE DISCOVERY RULE AND FRAUDULENT CONCEALMENT..... 1

Conclusion..... 5

TABLE OF AUTHORITIES

CASES

Arant v. Kressler, 327 S.C. 225, 489 S.E.2d 206 (1997)..... 3, 4

Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996)..... 3, 4

Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014).. 4

Dunbar v. Carlson, 341 S.C. 261, 533 S.E.2d 913 (Ct. App. 2000). 3

Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993). 3

Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998). 3, 4

Strong v. University of S.C. Sch. of Med., 316 S.C. 189, 447 S.E.2d 850 (1994). 4

Walbeck v. I’On Co., 439 S.C. 568, 889 S.E.2d 537 (2023)..... 3

RESPONSE TO ARGUMENTS BY AMICUS

1. THE AMICUS BRIEF OF THE SOUTH CAROLINA ASSOCIATION FOR JUSTICE IS A THOROUGH AND THOUGHTFUL DEFENSE OF THE JURY'S IMPORTANT ROLE IN RESOLVING DISPUTES OF FACT ON CRITICAL ISSUES INVOLVING THE STATUTE OF LIMITATIONS, INCLUDING THE DISCOVERY RULE AND FRAUDULENT CONCEALMENT.

In its Amicus Brief, the South Carolina Association for Justice correctly recognizes the fatal flaw in Petitioners-Respondents' arguments regarding the statute of limitations issues in this case: the discovery rule cannot be decided as a matter of law here. When Mr. Hess knew or reasonably should have known he had a claim against Dr. Morphis and the Lancaster practice for purposes of the discovery rule and whether the statute of limitations should have been tolled by the fraudulent concealment doctrine were both sharply disputed questions of fact for the jury to decide based on the trial record. No matter how many times Petitioners-Respondents falsely state otherwise, Mr. Hess did not admit during his trial testimony that he knew his bonus was improperly paid prior to July or August of 2018, nor should he reasonably have known that he had a claim based on the limited financial information he had about the practice's profitability, which information was deliberately withheld from him by Dr. Morphis and her accountant. The trial record, when properly viewed in the light most favorable to Mr. Hess, as the prevailing party at trial, simply does not compel the factual inferences and conclusions argued by Petitioners-Respondents.

The fact that Mr. Hess had questions or even suspicions about whether his bonuses had been properly calculated and paid by Dr. Morphis in early- or mid-2015, when his bonus for 2014 was identical to the bonus he received in 2013, was simply not enough to start the statute of limitations running on his claim for violation of the South Carolina Payment of Wages Act, because whenever

he raised those questions or voiced his suspicions or concerns to Dr. Morphis or the accountant, they repeatedly provided false information or plausible (but false) explanations that reasonably satisfied his questions, suspicions, or concerns at the time. There was no way for Mr. Hess to verify or challenge those explanations without having full access to the practice's financial records, which were repeatedly and deliberately kept from him.

Petitioners-Respondents were free to argue to the jury that Mr. Hess should have known that something was amiss by Dr. Morphis's and her accountant's repeated refusal to open the practice's books to him, but the jury was also free to reject that argument, which the jury obviously did in awarding the substantial verdicts in favor of Mr. Hess on all of his causes of action.

Furthermore, the jury's verdicts against Dr. Morphis for fraud and breach of contract accompanied by a fraudulent act, which were decided by clear and convincing evidence, fully support Respondent-Petitioner's arguments under the fraudulent concealment doctrine that Dr. Morphis and her accountant deliberately mislead Mr. Hess and concealed crucial information from him that he would have needed to know before he could ever determine whether or not he had a claim for underpaid bonuses. When Mr. Hess was finally given access to five years of the practice's financial records in the summer of 2018, as part of the request for bids when Dr. Morphis announced her decision to try to sell the Lancaster practice, Mr. Hess knew immediately that he had not received half of the profits of the Lancaster practice as his bonuses, as required by Appendix A to the 2010 Employment Agreement. Mr. Hess filed this lawsuit in September 2018, less than two months after he finally knew the true profits of the Lancaster practice.

The Amicus Brief of SCAJ properly recognizes the well-established precedent in South Carolina that issues involving the statute of limitations, such as application of the discovery rule and

the fraudulent concealment doctrine are generally questions of fact for the jury. Walbeck v. I'On Co., 439 S.C. 568, 889 S.E.2d 537 (2023); Arant v. Kressler, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997); Dean v. Ruscon Corp., 321 S.C. 360, 366, 468 S.E.2d 645, 648 (1996); Garner v. Houck, 312 S.C. 481, 485, 435 S.E.2d 847, 849 (1993); Dunbar v. Carlson, 341 S.C. 261, 269, 533 S.E.2d 913, 917 (Ct. App. 2000); Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). The mere fact that some of the above-cases determined that the record on appeal in those cases did not contain any disputed facts that required the jury's resolution on the discovery rule is not surprising, nor is it particularly significant for purposes of this case.

The facts of cases like Dean v. Ruscon, Arant v. Kressler, and Maher v. Tietex, are easily distinguishable from the facts contained in the record on appeal in this case. In Dean, the plaintiff herself (as well as her own expert witness) testified at trial that she believed the cracks in her building were caused by the initial pile-driving activity that occurred outside of the six-year statute of limitations. Dean, 321 S.C. at 362-63, 468 S.E.2d at 647. In Arant, the plaintiff admitted that the doctor who performed her D & C told her on January 24, 1990, that her excessive bleeding was caused by the delivering doctor's failure to remove all of the placenta; thus, her medical malpractice complaint filed on February 2, 1993, was plainly barred by the three-year statute of limitations. Arant, 327 S.C. at 229, 489 S.E.2d at 208. And in Maher, the plaintiff admitted that he had two conversations with his supervisor in 1989 and 1990 about not receiving any payments under the 50%-profit bonus plan since 1987; yet he did not file the lawsuit until September 28, 1994, well after the three-year statute of limitations for breach of contract had expired. Maher, 331 S.C. at 377-79, 500 S.E.2d at 207-08. In each of these three cases, there was no dispute of material fact about when the plaintiff knew or reasonably should have known that he or she had a claim for purposes of the

discovery rule. Here, by contrast, the record on appeal contains sharply disputed questions of fact regarding the discovery rule that only the jury should have decided.

Furthermore, neither Arant nor Dean involved any allegations that the statute of limitations should have been tolled by the fraudulent concealment doctrine. In Maher, the court rejected the plaintiff's assertion of equitable estoppel based on the company's misrepresentation of its profits earnings, because the plaintiff could not establish reliance on any misconduct of the defendant employer. Maher, 331 S.C. at 381-82, 500 S.E.2s at 209. The discussion by Amicus about the application of the fraudulent concealment doctrine as recognized in Strong v. University of South Carolina School of Medicine, 316 S.C. 189, 447 S.E.2d 850 (1994), and Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014), is spot on. Tellingly, Petitioners-Respondents' Reply to Amicus Brief completely ignores the fraudulent concealment doctrine as a basis for tolling the statute of limitations here.

In sum, the Amicus Brief of the South Carolina Association for Justice is a thorough and thoughtful defense of the jury's important role in resolving disputes of fact on critical issues involving the statute of limitations, including the discovery rule and fraudulent concealment

* * *

CONCLUSION

For all of the foregoing reasons, Respondent-Petitioner respectfully requests that this Court affirm the ruling of the South Carolina Court of Appeals on the issues accepted for review.

Respectfully submitted,

May 11, 2026

s/ David E. Rothstein
David E. Rothstein, SC Bar No. 66295
BURNETTE, SHUTT & McDANIEL, P.A.
415 W. Washington Street
Greenville, SC 29601
(803) 904-7928 (direct)
Attorney for Respondent-Appellant