FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-07-3595

Charles Gary

PLAINTIFF(S)

Hattie M. Askew et. al.

DEFENDANT(S)

Submitted by: Joseph Dawson, III (SC #13570) Post Office Box 41367 North Charleston, SC 29423	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (~~formal order to follow~~) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date 8/9/13

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2012-CP-07-3595
CHARLES GARY,	)	
	)	
PLAINTIFF,	)	
	)	ORDER GRANTING SUMMARY JUDGMENT TO THE PLAINTIFF ON HIS NEGLIGENCE, LOSS OF COMPANIONSHIP OF SPOUSE, AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS CAUSES OF ACTION
vs.	)	
	)	
HATTIE M. ASKEW, WILL OUTLAW, AND DEBORIA OUTLAW, INDIVIDUALLY AND D/B/A LOW COUNTRY MEDICAL TRANSPORT, LOW COUNTRY MEDICAL TRANSPORT, INC., EUGENE A. KIRKLAND, AND AMERICAN MEDICAL RESPONSE, INC. (D/B/A ACCESS2CARE)	)	
	)	
DEFENDANTS	)	
	)	

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The Plaintiff Charles Gary filed this lawsuit on October 16, 2012, alleging Negligence, Negligence Per Se, Gross Negligence, Loss of Consortium/Companionship of Spouse, and Negligent Infliction of Emotional Distress against the defendants in this case, resulting from a single ambulance accident.

This Court held a motions hearing on May 14, 2013, to decide the Plaintiff Charles Gary's Summary Judgment Motion on three of his causes of action pursuant to Rule 56, South Carolina Rules of Civil Procedure. The Plaintiff argues that he is entitled to a judgment as a matter of law on his Negligence, Loss of Companionship of Spouse, and Negligent Infliction of Emotional Distress claims, because the Defendants Hattie M. Askew, individually and d/b/a Low Country Medical Transport ("LCMT"), Low Country Medical Transport Inc., (LCMT and Low Country Medical Transport Inc. collectively

Save and except Son Will Outlaw and DeVorah Outlaw.

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referred to herein as "Low Country Medical") Eugene A. Kirkland, and American Medical Response Inc., (D/B/A Access2Care) (hereinafter "Access2Care"), (collectively "Defendants") are liable for the damages he suffered resulting from the single ambulance collision.

Based on the arguments of counsel, pleadings, affidavits, exhibits, memoranda of law, the undisputed record before me, and applicable case law and statutes, I find that there are no genuine issues of material fact in dispute and that Mr. Gary is entitled to judgment as a matter law on his Negligence, Loss of Consortium/Companionship of Spouse, and Negligent Infliction of Emotional Distress claims based on the following undisputed facts and conclusions of law.

Charles Gary is a 61-year old bedridden diabetic, amputee, and paraplegic who lost the use of his lower body in 2004, in an unrelated incident. Mr. Gary is unemployed and draws social security. He is also a Medicaid beneficiary in South Carolina. Before this single ambulance accident, Mr. Gary lived at home with his wife, Blondell Gary, who died in the single ambulance accident, complained of herein. Mrs. Gary did not work outside of the home, instead she assisted Mr. Gary with all of his daily activities including bathing, dressing, preparing meals, shopping, cleaning the house, and caring for his pre-existing medical conditions and disabilities.

On or about May 25, 2011, the State of South Carolina Department of Health and Human Services (the "Health Department") entered into a contract ("Contract") with Access2Care to implement the South Carolina Non-Emergency Medical Transportation

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(NEMT) Program.[1] The NEMT Program pays for transportation of eligible Medicaid members to medical care or services, which are covered under the Medicaid Program. The NEMT Program is intended to provide non-emergency medical transportation services in a cost-effective manner to Medicaid members who need access to medical care or services. This Contract was initiated through a competitive request for proposal (RFP) solicitation process to provide non-emergency medical transportation services to eligible Medicaid recipients in South Carolina (like Mr. Gary).

Access2Care is a Delaware Corporation, licensed to do business in the State of South Carolina. Pursuant to the RFP and its Contract with the Health Department, Access2Care was tasked with administering the daily functions of the NEMT Program for Medical Transportation for South Carolina's Regions Two and Three. Mr. Gary resides in Region 3. The NEMT Program was a turnkey operation where Access2Care would provide transportation management and administration services to Medicaid members. Access2Care's duties and responsibilities under its Contract included the following examples:

> The Broker must ensure that high quality services are provided . . . . *Section 2.4.8 General Broker Requirements*
>
> The Broker is responsible for fulfilling all verified trip requests and ensuring that all trips are completed safely and on-time. *Section 3.3.5 Fulfillment of All Trip Requests*
>
> The Broker must promptly report to SCDHHS accidents, injuries, and incidents that have occurred in conjunction with a scheduled trip if a Member was present in the vehicle. *Section 3.3.8 Accidents, Injuries, and Incidents*

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[1] The Defendants do not dispute that the South Carolina Non-Emergency Medical Transportation (NEMT) Program Request for Proposal bid documents is the basis for the Health Department's contract with Access2Care and that there is no separate contract signed after a Request for Proposal process is completed.

> The Broker is responsible for all services provided by transportation providers. The Broker must ensure adequate oversight of transportation providers and ensure that they comply with all applicable State and Federal laws and regulations. The Broker must monitor the transportation providers to ensure . . . driver requirements, vehicle requirements, complaint resolution and delivery of courteous, safe, timely and efficient transportation services. *Section 3.3.15 Monitoring Plan*
>
> The Broker must provide assurance that the transportation providers meet health and safety standards . . . complaint resolution; and the delivery of courteous, safe, and timely transportation services. *Section 3.12 Quality Assurance*

The NEMT Contract placed all responsibility to administer the Program on Access2Care. For instance, "[t]he Broker is responsible for receiving and responding to all complaints about NEMT services under this contract, whether oral or written, from members, transportation providers, health care providers, facilities, SCDHHS or other sources." *Section 3.11.1 Complaints.* The Contract imposed certain duties on Access2Care to ensure, in particular, the safety of its members.

The Health Department authorized Access2Care to hire qualified non-emergency medical transportation providers to provide transportation services to eligible Medicaid recipients. On August 17, 2011, Access2Care began to provide NEMT services to eligible Medicaid recipients in South Carolina. While under Contract with the Health Department, Access2Care entered into a contract with Low Country Medical Transport Inc., and/or LCMT titled "Access2Care Transportation Solutions Subcontractor Agreement" so that Access2Care could dispatch Low Country Medical as part of its

NEMT network.[2]

On January 31, 2012, Access2Care scheduled Low Country Medical to provide non-emergency medical transportation for Mr. Gary to and from his medical appointment. At approximately 11:00 a.m., Low Country Medical's ambulance was transporting Mr. Gary and his wife home after his medical appointment. Defendant's Answers to Interrogatories indicate that Eugene A. Kirkland (the ambulance driver) realized he was in the wrong lane and he over-corrected causing the ambulance to run off the road and hit a tree on Old Sheldon Church Road in Yemassee, South Carolina.

The collision caused injuries to Mr. Gary and killed his wife.

Mr. Gary was strapped to a stretcher in the back of the ambulance and his wife was riding in the front passenger seat. Beaufort County EMS transported Mr. Gary to Beaufort Memorial Hospital. He was later transferred to the Medical University of South Carolina, with injuries resulting from the crash.

CONCLUSIONS OF LAW

Reviewing the Plaintiff's motion for summary judgment in a light most favorable to the Defendants, I find that there are no genuine issues of material fact in dispute based on the legal theories presented by the Plaintiff; and therefore, the Defendants are liable for the Plaintiff's injuries and damages as a matter of law. "Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

[2] Low Country Medical has been in the business of transporting individuals to and from medical facilities since 2004. On October 1, 2007, the South Carolina Secretary of State's Office administratively dissolved Low Country Medical Transport Inc.'s, corporate status in South Carolina. The South Carolina Secretary of State reinstated it on February 29, 2012, after the date of the accident. The LCMT continued to operate until Low Country Medical Transport Inc.'s., reinstatement by the South Carolina Secretary of State four and half years later.

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issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Platt v. CSX Transportation, 379 S.C. 249 665 S.E.2d 631 (Ct.App. 2008). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Id. "Summary judgment is not appropriate where further inquiry into . . . the facts is desirable to clarify the application of the law . . . However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Platt supra.

"Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law." Dawkins v. Fields, 354 S.C. 58, 70, 580 S.E.2d 433, 439 (2003). The Defendants argue that Summary Judgment is premature, because no dispositions have been taken and several factual questions remain to be developed in discovery. While questions may remain, they are not material to the causes of action raised in the Plaintiff's motion for summary judgment. The Defendants have failed to show a genuine issue of fact in dispute regarding the events that occurred on the date of the accident except hypotheticals.[3] It is improbable that further discovery will mitigate the facts surrounding this single ambulance accident in the Defendants' favor. Therefore, summary judgment is appropriate in this case.

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[3] The Defendants argue that summary judgment is not appropriate, because it was not clear why Kirkland ran off the road in this single ambulance accident. The Defendants cannot defeat a summary judgment motion by simply raising a hypothetical question and then offering the absence of an answer as the defense to the question. "It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." Durkin v. Hansen, 313 S.C. 343, 437 S.E.2d 550 (Ct.App. 1993).

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NEGLIGENCE

Access2Care, Low Country Medical, and Eugene A. Kirkland (Kirkland) are liable for injuries Mr. Gary suffered when Low Country Medical's ambulance ran off the road and struck a tree on Old Sheldon Church Road in Yemassee, South Carolina, under the Plaintiff's Negligence Cause of Action. "In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages." Moore v. Weinberg, 383 S.C. 583, 681 S.E.2d 875 (2009). "The existence of a duty owed is a question of law for the courts." Simmons v. Toumey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000). I find as a matter of law that the Defendants have a duty.

The Defendants individually and collectively owed the Plaintiff a duty of care when they decided to engage in the business of NEMT services in South Carolina. It is undisputed that Access2Care scheduled NEMT services for Mr. Gary's January 31, 2012, medical appointment. Access2Care sent Low Country Medical to Mr. Gary's house to transport him to and from his medical appointment. It is undisputed that Kirkland was driving Low Country Medical's ambulance when he lost control of the vehicle and hit a large tree. Kirkland had a clear legal duty to operate the ambulance in a safe manner and avoid dangers.

Moreover, Low Country Medical as a non-emergency medical transportation provider had a duty of care to transport Mr. Gary safely, while he was in its custody and control. "Under the doctrine of respondeat superior, the employer is liable for the acts of

an employee acting within the scope of employment." Austin v. Specialty Trans. Services, 358 S.C. 298, 594 S.E.2d 867 (Ct.App. 2004). "The doctrine of respondeat superior provides that the employer, as the employee's master, is called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment." James v. Kelly Trucking, 377 S.C. 628, 661 S.E.2d 329 (2008). Low Country Medical owed a duty of care to Mr. Gary when it agreed to transport Mr. Gary as an Access2Care NEMT service provider via its employee driver.

Equally, Access2Care had a duty of care to Mr. Gary arising out of its Contract and operating as broker of NEMT services. Access2Care had a contract with the Health Department to provide eligible Medicaid members with NEMT services for a fee. Access2Care's Contract with the Health Department required Access2Care to be ". . . responsible for fulfilling all verified trip requests and ensuring that all trips are **completed safely** and on-time." *Health Department Contract Section 3.3.5 Fulfillment of All Trip Requests.* Moreover, Access2Care's Contract with the Health Department stated in Section 3.3.15 Monitoring Plan that:

> The Broker is **responsible for all services provided by transportation providers**. The Broker must ensure adequate oversight of transportation providers and **ensure that they comply with all applicable State and Federal laws and regulations**. The Broker must monitor the transportation providers to ensure compliance with the terms of their subcontracts and ensure compliance with all transportation provider-related requirements of this RFP including driver requirements, vehicle requirements, complaint resolution and **delivery of courteous, *safe*, timely and efficient transportation services**.

In this case, Access2Care scheduled NEMT service for Mr. Gary for a medical appointment he had on January 31, 2012. Access2Care dispatched Low Country

Medical to Mr. Gary's home in Yemassee, South Carolina. Access2Care had a contractual duty and responsibility to provide safe and reliable NEMT services to Medicaid members pursuant to its contract with the Health Department. In addition, Access2Care had a duty to ensure that its NEMT service providers complied with all applicable State and Federal laws and regulations. The Defendants clearly owed Mr. Gary a duty of care when they agreed to provide NEMT services to him for a fee.

Access2Care, Low Country Medical, and Kirkland breached their duty of care to Mr. Gary when Low Country Medical's ambulance ran off the road. "A breach of duty exists when it is foreseeable that one's conduct may likely injure the person to whom the duty is owed." Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct.App. 1996). It is undisputed that Low Country Medical's driver failed to maintain the ambulance on the road safely, which resulted in injuring Mr. Gary. The Defendants' breach of their duty of care caused Mr. Gary to suffer multiple fractured ribs and pelvic bones, among other injuries and damages from the accident.

Kirkland's breach of his duty of care to Mr. Gary was the proximate cause of Mr. Gary's injuries and damages. "A negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred." Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct.App. 1996). "Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence." Id. "Only when the evidence is susceptible to only one inference does it become a matter of law for the court. Vinson, supra. I find that the unique facts of this

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case are susceptible to only one inference. The evidence clearly shows that Low Country Medical's ambulance, which was driven by Kirkland its employee, ran off the road and struck a tree seriously injuring Mr. Gary and killing his wife. The undisputed evidence in this case is susceptible to only one inference. Kirkland's negligent act was the proximate cause of Mr. Gary's injury, because it was the natural and continuous sequence of events that produced his injuries and without it, the injury would not have occurred. Therefore, the Defendants' conduct was the proximate cause of Mr. Gary's injuries based on the facts articulated herein, because they are vicariously liable.

Access2Care adamantly rejects the notion that it is vicariously liable for injuries Mr. Gary sustained when its subcontractor caused the single-ambulance accident. Access2Care asserts that Low Country Medical's independent contractor status is an absolute bar to its liability. In the alternative, Access2Care contends that the doctrine of Apparent Agency controls and summary judgment is not appropriate because Mr. Gary has failed to make a showing of the elements for Apparent Agency. I disagree with both assertions.

"Traditionally, employers have avoided vicarious liability for the torts of their employees, which agency law imposes through the doctrine of respondeat superior, by acting through independent contractors. Restatement (Second) of Agency § 250 (1958). However, '[a] person who delegates to an independent contractor an absolute duty owed to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an employee.'" Simmons v. Toumey Regional Medical Center, 330 S.C. 115, 498 S.E.2d 408 (Ct.App. 1998).

"The doctrine of nondelegable duty has traditionally been used to describe a form of vicarious liability. . . ." Smith v. Regional Medical Center, 394 S.C. 110, 713 S.E.2d 656 (Ct.App. 2011). South Carolina Courts have found a non-delegable duty to exist at common law and by statute. For instance, the South Carolina Supreme Court noted, "a hospital owes a common law nondelegable duty to render competent service to its emergency room patients such that it may not avoid liability for the negligent acts of emergency room physicians hired as independent contractors under a contract between the hospital and a separate corporation." Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001).

Under South Carolina law, "[a] person may delegate a duty to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains liable for that breach. It actually is the liability, not the duty, that is not delegable. The party which owes the nondelegable duty is vicariously liable for negligent acts of the independent contractor." Simmons v. Toumey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000); citing, Simmons, 330 S.C. at 123, 498 S.E.2d at 412; see also F. Patrick Hubbard & Robert L. Felix, The South Carolina Law of Torts 654 (1997). The South Carolina Court of Appeals found in Durkin that:

> The performance of duties assumed by Respondents by the rental agreement and those imposed by the [Residential Landlord and Tenant Act] may, of course, be delegated to others. However, liability for injury or damage resulting from the performance of these duties may not be avoided merely by the employment of an independent contractor. [Citation Omitted]. . . . ("[A] landlord who undertakes to make repairs or improvements for the benefit of his tenant, whether he is obligated by law or by agreement with the tenant to do so, or whether he does so gratuitously, cannot relieve himself from his liability for negligence in

> making such repairs or improvements by employing an independent contractor to do the work. . . .").

Durkin v. Hansen, 313 S.C. 343, 437 S.E.2d 550 (Ct.App. 1993).

The general proposition is clear; a principal cannot insulate himself from liability that has been assumed by agreement through the employment of an independent contractor. See Durkin supra.[4]

Access2Care had an absolute duty under its contract with the Health Department to provide "safe" transportation to Mr. Gary. The Health Department's NEMT Contract clearly indicates that public policy and its Contract impose a non-delegable duty on the NEMT Program administrators to provide competent and safe non-emergency medical transport services to Medicaid members, pursuant to a significant number of control measures and protocols. The Osborne Court, reviewing the instances where South Carolina Courts have found a non-delegable duty concluded:

> The cited cases clearly illustrate that a person or entity entrusted with important duties in certain circumstances may not assign those duties to someone else and then expect to walk away unscathed when things go wrong.

Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001).

Given the duties imposed under the NEMT Contract and the extensive control Access2Care had over its NEMT service providers, Access2Care cannot walk away

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[4] The Simmons I Court quoted Dean Prosser stating, "A different approach, manifested in several of the exceptions to the general rule of nonliability [for independent contractors], has been to hold that the employer's enterprise, and his relation to the plaintiff, are such as to impose upon him a duty which cannot be delegated to the contractor. . . . [T]he cases of "nondelegable duty" . . . hold the employer liable for the negligence of the contractor, although he has himself done everything that could reasonably be required of him. . . . **It is difficult to suggest any criterion by which the nondelegable character of such duties may be determined, other than the conclusion of the courts that the responsibility is so important to the community that the employer should not be permitted to transfer it to another.**" Simmons v. Toumey Regional Medical Center, 330 S.C. 115, 498 S.E.2d 408 (Ct.App. 1998).

from its responsibilities under its NEMT Contract where the duties are so important to the Medicaid members and simply transfer it to another.

Alternatively, the doctrine of non-delegable duty is not predicated on the Apparent Agency Doctrine. "Under the apparent agency doctrine, the injured patient must establish that (1) the hospital consciously or impliedly represented the physician to be its agent, (2) the patient relied upon the representation, and (3) the patient changed his position to his detriment in reliance on the representation." Simmons v. Toumey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000) (Simmons II). Conversely, "[a] nondelegable duty is essentially an exception to the general rule that principals are not liable for the torts of independent contractors." Simmons v. Toumey Regional Medical Center, 330 S.C. 115, 498 S.E.2d 408 (Ct.App. 1998) (Simmons I). Mr. Gary's non-delegable duty argument is not based on his mental state or perceptions regarding who was responsible for his care. Rather, Mr. Gary's claim is predicated on Acces2Care's non-delegable duty to ensure all trips are completed safely and on time. The Simmons II Court did not nullify the absolute duty rule created under the Non-Delegable Duty Doctrine, but simply concluded that it was not necessary in the case at hand.[5] Therefore, Access2Care's argument that this Court should deny the Plaintiff's motion, because he has not proved the elements for Apparent Agency is misplaced.

LOSS OF CONSORTIUM/COMPANIONSHIP OF SPOUSE

[5] The Simmons II Court held in its conclusion that "[w]e could remand the apparent agency issue to the Court of Appeals for its consideration and ordinarily would find that an appropriate disposition. However, we conclude it is unnecessary to remand this case to the Court of Appeals because the parties have raised both issues to us on the merits and because the analyses of apparent agency and nondelegable duty are so closely intertwined in this instance. Although closely related, each is a viable theory an injured patient may assert. Accordingly, we also reverse the grant of summary judgment to Tuomey Regional on the ground of apparent agency in both respondents' cases." Simmons v. Toumey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000).

Since I have determined that the Defendants are liable under Mr. Gary's Negligence Cause of Action, I equally find that the Defendants have violated Mr. Gary's right to the companionship, aid, society, and services of his wife Blondell. It is undisputed that Mr. Gary and his wife were riding in an ambulance dispatched by Access2Care, owned by Low Country Medical, and driven by Kirkland, when it suddenly ran off the shoulder of Old Sheldon Church Road and hit a tree killing Mrs. Gary. Mr. Gary, a paraplegic survived the accident with injuries, but he lost his wife, his primary caregiver, and sole means of support in the accident. In South Carolina, "[a]ny person may maintain an action for damages arising from an intentional or tortious violation of the right to the companionship, aid, society and services of his or her spouse." S.C. Code Ann. § 15-75-20. "[C]laims for personal injury and loss of consortium are separate and distinct, not derivative of each other, and each litigant is entitled to a verdict based on the law and the evidence.

Mr. Gary is a bedridden paraplegic. Prior to the accident, Mrs. Gary assisted Mr. Gary with all of his daily activities including bathing him, dressing him, preparing meals, shopping, cleaning the house, and caring for his pre-existing medical conditions and disabilities. Mr. Gary was almost completely dependent on Mrs. Gary. She was his sole means of comfort, care, and support prior to her death caused by the Defendants. It is clear, based on my earlier findings that Mrs. Gary's death was caused by the negligence of the Defendants. Therefore, Mr. Gary is entitled to compensatory damages against the Defendants for the loss of his wife's companionship, aid, society, and services.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

I also find that Mr. Gary has suffered severe emotional distress, shock, and wounded feelings, because he experienced his wife's death in a single ambulance accident caused by the negligence of the Defendants. The Defendants' tortious actions have caused Mr. Gary to suffer negligent infliction of emotional distress. "In order to prevail on this cause of action, a plaintiff must show that: (a) the negligence of the defendant caused death or serious physical injury to another; (b) the plaintiff bystander was in close proximity to the accident; (c) the plaintiff and the victim are closely related; (d) the plaintiff contemporaneously perceived the accident; and (e) the plaintiffs emotional distress manifests itself by physical symptoms capable of objective diagnosis and be established by expert testimony." Doe v. Greenville County, 375 S.C. 63, 651 S.E.2d 305 (2007).

As stated above, the Defendants' negligence in failing to keep the ambulance under proper control resulted in the ambulance running off the road and hitting a large tree. It is undisputed that this act caused Blondell Gary's death. Mr. Gary was in close proximity to the accident when it occurred. The Defendants do not dispute that Mr. Gary was in the back of the ambulance strapped to a stretcher. It is unquestioned that Mr. Gary was closely related to Blondell Gary, because they were married. Furthermore, Mr. Gary contemporaneously perceived the accident complained of herein, because he was also a victim of the accident while riding in the same vehicle.

In Kinard, the South Carolina Supreme Court adopted the cause of action negligent infliction of emotional distress. See, Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985). In Kinard, Betty Kinard and her daughter were injured

when a load of roof trusses fell from Augusta Sash & Door Co.'s truck and struck the car in which they were riding. Kinard's daughter was severely injured and remained comatose for three months. Betty Kinard experienced severe emotional distress because of the accident. Similarly, Mr. Gary was riding in the same vehicle with his wife, and he has suffered severe emotional distress and shock, because of her death.

Although Mr. Gary has exhibited manifestations of his shock and horror through nightmares, insomnia, anxiety, and depression. There is no evidence in the record to refute Mr. Gary's claims. Therefore, I find as a matter of law that Mr. Gary has met the elements necessary to prevail on his Negligent Infliction of Emotional Distress claim.

IT IS THEREFORE ORDERED that summary judgment be entered for the Plaintiff Charles Gary on his Negligence, Loss of Consortium/Companionship of Spouse, and Negligent Infliction of Emotional Distress causes of action.①

AND IT IS SO ORDERED.

Marvin H. Dukes, III
Master-in-Equity and Special Circuit Court Judge for Beaufort County

Beaufort, South Carolina
8/14, 2013

① except as to outlaw Defendants.

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