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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen Mullen, Circuit Court Judge

Case No. 2020-CP-07-0065

Sandra Holland, as Administrator of the Estate of Christopher
Lee Holland, deceased, and Saleena Ramm, as Parent and Natural Guardian
of R.D.H., a Minor Child of Decedent Christopher Lee Holland Respondents,

v.

David A. Brosman, M.D., Pain Management ASC, LLC,
MPS Solutions, Inc., Anesthesia Associates of Hilton Head Pain
Management, LLC, Appellants.

**APPELLANTS' RETURN IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS
APPEAL AND FOR EXPEDITED CONSIDERATION**

The Appellants David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., and Anesthesia Associates of Hilton Head Pain Management, LLC appeal from the trial court's order filed August 24, 2026 (incorrectly captioned as "Proposed Order") providing a final ruling on the choice of law issues and striking the Appellants' defenses under Georgia law including a two-year statute of limitations defense. The Respondents have filed a Motion to Dismiss Appeal, for which the Court established an abbreviated briefing schedule. In their

motion, the Respondents argue that that order filed August 24, 2026, is not immediately appealable. The Appellants disagree and oppose that motion.

FACTUAL AND PROCEDURAL BACKGROUND

This is a wrongful death action arising from a motor vehicle accident that occurred in Effingham County, Georgia. The decedent, Christopher Lee Holland, was a resident of Georgia. The decedent's estate is administered in the State of Georgia. The Personal Representative and the only statutory beneficiary, who is also named as a plaintiff in accordance with Georgia law, was domiciled in the State of Georgia at the time of the accident. The decedent's injuries and death as well as any injuries to the statutory beneficiary occurred in the State of Georgia. Moreover, the Appellants' patient who was also involved in the motor vehicle accident, James Sanders, is a resident of the State of Georgia, and his tort liability for the accident was subject to Georgia law.¹ Sanders was treated for pain management by the Respondents in their office located in South Carolina.

The Respondents filed this action in 2020 in the Beaufort County Court of Common Pleas. The parties do not agree on the governing law. The Appellants contend that, pursuant to the prevailing choice of law rule under South Carolina law, which is *lex loci delicti*, the law of Georgia governs in this action. The Respondents, in contrast, contend that the law of South Carolina governs. At the hearing on July 30, 2026, the parties agreed that the choice of law issue, which may be adjudicated on undisputed facts, was to be decided as a question of law by the trial court and that the issue required adjudication prior to the commencement of the trial. In the Order filed August 24, 2026, the trial court explained that "[t]he parties agree that the

¹ In fact, there was previously a civil action brought by the Respondents against Sanders in Georgia state court.

question of which state's substantive law governs this action is a question of law for the Court and that it must be answered before the trial scheduled to begin on August 31, 2026.” (Order, p. 1). In a detailed, twelve-page opinion, the trial court made a final ruling on the choice of law issue and determined that “substantive South Carolina law governs this action.” (Order, p. 12). As the trial court further ruled, “[b]ecause the substantive law of South Carolina governs, the defenses the Defendants assert under Georgia law, including Georgia’s privity requirement and its two-year statute of limitations, are unavailable.” (Order, p. 11).

DEFENSES UNDER GEORGIA LAW

While the Appellants recognize that it is premature to fully argue the merits of the choice of law issues which are presented for appeal, the Appellants will include a brief explanation of the defenses available under Georgia law. In particular, if the substantive law of Georgia is applied to this case, the Appellants take the position that the Respondents are barred from any recovery. Of note, the Respondents have never challenged the applicable Georgia law, as raised by the Appellants, nor disputed that their claims are barred under Georgia law. The Respondents have only argued to date that Georgia law does not govern.

Thus, if the substantive law of Georgia is applied, there is no dispute that the Respondents’ medical malpractice claim against the Appellants is barred as a matter of law. Georgia law requires a physician-patient relationship as a prerequisite to bringing a medical malpractice cause of action. There was no physician-patient relationship between the Appellants and the decedent Christopher Holland and/or the Respondent Saleena Ramm, and as a result, the Respondents’ medical malpractice claim would be barred as a matter of law under Georgia law.

In the case of *Shortnacy v. North Atlanta Internal Medicine*, 252 Ga. App. 321, 556 S.E.2d 209 (2001), the Georgia Court of Appeals held that third parties who were injured by a patient who drove after taking Demerol and Phenergan could not maintain a medical malpractice cause of action against the treating doctor because no physician-patient relationship existed between the injured persons and the doctor.

The case of *Gilhuly v. Dockery*, 273 Ga. App. 418, 615 S.E.2d 237 (2005), is also dispositive. The plaintiffs brought a medical malpractice for their injured children. The children were injured in a motor vehicle accident caused by their mother who was driving. Prior to the accident, the mother had been prescribed Demerol and Phenergan at the hospital and was discharged without being warned not to drive. The Georgia Court of Appeals reversed a denial of summary judgment finding that there was no physician-patient relationship between the sons and the doctor who was sued. The Court explained that “Georgia law is clear that physician-patient privity is an absolute requirement for the maintenance of a professional malpractice action.” 615 S.E.2d at 238. There are two narrow exceptions to the general rule, but neither applied. The Court concluded that “Dr. Gilhuly had no duty to the sons here, as they were not his patients.” 615 S.E.2d at 239.

In addition, as mentioned by the trial court in its order, Georgia law provides for a two-year statute of limitations for medical malpractice actions. *See*, O.C.G.A. § 9-3-71(a). The Notice of Intent to Sue was filed in this case on October 11, 2019. The date of the accident was October 13, 2016. The case is thus barred by the two-year statute of limitations under Georgia law.

LEGAL ANALYSIS

Under South Carolina law, the right of appeal arises from and is controlled by statutory law, specifically Section 14-3-330. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707, 708 (2005). “An appeal ordinarily may be pursued only after a party has obtained a final judgment.” *Id.* “A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution.” *Tillman v. Tillman*, 420 S.C. 246, 801 S.E.2d 757, 759 (Ct. App. 2017). “An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory.” *Id.*

However, under Section 14-3-330(1), an interlocutory order “involving the merits” is subject to an immediate appeal. An order “involves the merits” when it “finally determines some substantial matter forming the whole or a part of some cause of action or defense.” *Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456, 456 (1988). Additionally, “[i]nterlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right discontinue an action, prevent an appeal, grant or refuse a new trial, or *strike out an action or defense*.” *Edwards v. SunCom*, 369 S.C. 91, 631 S.E.2d 529, 530 (2006). (Emphasis added).

Clearly, the order on appeal meets the requirements of both Section 14-3-330(1) and Section 14-3-330(2) for an immediate appeal of an interlocutory order. As discussed above, the trial court issued an order finally adjudicating the choice of law issue, which is the controlling issue at the very heart of this litigation. The trial court determined as a question of law and based on undisputed facts (as stipulated by the parties) that the substantive law of South Carolina governs. The trial court made that ruling by applying the seldom-used exception to the rule of *lex loci delicti* and finding that the public policy of South Carolina requires that South Carolina

law be applied. Further, and most significantly to the appealability issue currently before this Court, the trial court found that “the defenses the Defendants assert under Georgia law, including Georgia’s privity requirement and its two-year statute of limitations, are unavailable,” which effectively struck those defenses. (Order, p. 11). With that ruling on the choice of law, it is clear that the trial court’s order on appeal “involves the merits” because that order “finally determines some substantial matter forming the whole or a part of some cause of action or defense. Thus, there is appellate jurisdiction under Section 14-3-330(1). Moreover, the trial court’s order “struck out” the defenses available to the Appellants under Georgia law – such defenses that indisputably defeat the Respondents’ claims. As discussed at length in the lower court, the net effect of the trial court’s decision to apply substantive South Carolina law is to grant the Respondents, who are all Georgia citizens, greater substantive rights that they do not enjoy in their own state and under their own laws. In sum, based on the case law interpreting Section 14-3-330(1) and Section 14-3-330(2), the order filed August 24, 2026 is immediately appealable.

In disputing the appealability of the trial court’s order, the Respondents focus primarily on the motions heard and decided by the trial court. The Respondents correctly point out that, after deciding that the substantive law of South Carolina applies, the trial court denied the Appellants’ motion for summary judgment. The Appellants fully understand that “an order denying a motion for summary judgment is not appealable.” *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994). That is because “[a] denial of a motion for summary judgment decides nothing about the merits of the case.” *Id.* The Appellants, however, are not appealing the portion of the trial court’s order which denied them summary judgment.

As this Court has explained on numerous occasions, in assessing appealability, the court “focus[es] on the effect of the order, not the label given to the motion or to the order granting it.”

Thornton v. South Carolina Electric & Gas Corp., 391 S.C. 297, 705 S.E.2d 475, 478 (Ct. App. 2011). Similarly stated, “[o]ur courts have previously looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability.” *Id.* at n.6. That rule is particularly critical in assessing the appealability of the trial court's order filed August 24, 2026. There is no question that is a final order on the choice of law issue and that a final ruling has been made that substantive South Carolina law rather than Georgia law applies to the trial of this case. The Respondents fully concede in their motion that the Appellants are precluded from arguing their defenses under Georgia law at trial. (Motion, pp. 8-9). They also fully concede that the "choice of law argument was heard, considered, and rejected *as a matter of law*.” (Motion, p. 9). (Emphasis added). Frankly, there is no other way to construe the trial court’s order.

Thus, in looking at the effect of the order -- rather than the label assigned to the motion or the order – there is no question that an immediate appeal has been commenced under Section 14-3-330(1) or Section 14-3-330(2) or mostly likely both sections. In all candor, the South Carolina Rules of Civil Procedure and the case law in this state are silent as to the appropriate mechanism for bringing a choice of law issue to the trial court for an adjudication prior to trial. The Appellants recognized, as did the Respondents at the hearing and the trial court in its order, that the choice of law issue had to be fully resolved prior to the commencement of the trial. Thus, the Appellants brought the matter before the Court in a motion captioned as a motion for summary judgment or alternatively as a “motion in limine on choice of law issues.”² Regardless of the

² The Appellants relied on the body of federal case law where courts have adjudicated a choice of law issue ahead of trial by way of a motion in limine. *See e.g., Hopp v. MJC America, Ltd.*, 2025 WL 306575 (W.D. Wisc. 2025) (“If the parties dispute the choice-of-law question for trial, they will have to present that issue in a motion in limine”); *Long v. Fairbank Farms Reconstruction Corp.*, 2011 WL 5118853 (D. Maine) (“[t]o the extent [the

label, it is clear that the Appellants were attempting to obtain an adjudication of the choice of law issues.

In so ruling, the trial court granted the motion in limine to rule that the “substantive law of South Carolina governs this action.” (Order, p. 12). There is no question that the Appellants are aggrieved by that decision and have standing to appeal that order. Whether the granting of a “motion in limine” is the proper label or not is not dispositive; instead, the Court must look at the effect of the order. Not only is there no guiding law in this state on what motion or other appropriate mechanism there may be for obtaining a ruling on choice of law, there is also no case law that addresses whether a decision on choice of law is immediately appealable under Section 14-3-330(1) or Section 14-3-330(2).³ Admittedly, there is authority holding that a pre-trial decision on a motion in limine *on an evidentiary issue* is not immediately appealable. *See, South Carolina Dept. of Transportation v. McDonald’s Corp.*, 375 S.C. 90, 650 S.E.2d 473, 474 (2007) (“[a] motion in limine is generally not considered a final order on the admissibility of evidence and, for that reason, is not immediately appealable”). But the present case does not involve an evidentiary issue – it involves a question of law. It makes sense that an in limine ruling on an evidentiary issue cannot be subject to an immediate appeal because the law recognizes that

motion] asks this Court to make a final determination regarding choice of law in advance of trial, the Court will treat this portion of the motion as a motion in limine regarding choice of law”); *Jenkins v. Whittaker Corp.*, 545 F.Supp. 1117 (D. Hawaii 1982) (court decided choice of law issue by way of motion in limine). The Respondents did not dispute whether a motion in limine may be utilized to obtain an adjudication of the choice of law issue prior to the start of trial.

³ The Respondents place undue emphasis on the case of *Barone v. Jaguar Land Rover North America, LLC*, Appellate Case Number 2022-001584 (S.C. Ct. App. Nov. 10, 2022), which was decided in a memorandum order by a single member of the Court. The Respondents argue that the *Barone* is “indistinguishable” from the case at bar, but that is not the case. In *Barone*, the Court dismissed the appeal because it was from an order denying motions for summary judgment. This case is different for the reasons explained herein. Additionally, the Respondents’ reliance on *Barone* decision is in direct violation of Rule 268(d)(2). *See*, Rule 268(d)(2), SCACR (“[m]emorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved”).

evidentiary objections must be asserted contemporaneously when the evidence is presented at trial.

However, a choice of law issue presents something much different. Whether an in limine ruling *per se* or not, the ruling was final and binding. There is no avenue for the Appellants to re-assert its Georgia law defenses during the trial of the case and for the trial court to make a different ruling. A case cannot be tried with the possibility that the applicable law will change during the course of the trial. That is not practicable, nor should that be proper procedure. The choice of law should be decided before the trial begins – just as the parties and the trial court agreed – and once that decision is made, there is no opportunity to change the law from that of the forum to that of another jurisdiction or vice versa. Even the Respondents concede that point. They acknowledge, as the trial court also made clear, that the defenses based on Georgia law are unavailable at trial. (Motion, pp. 8-9). Thus, this Court may agree that a motion in limine is the proper mechanism for raising a choice of law issue ahead of trial, and that may explain why the Supreme Court used the word “generally” in addressing the appealability of a ruling in limine, thereby leaving open the possibility of an appropriate in limine ruling being immediately appealable – likely not on an evidentiary ruling for the reasons stated but certainly on a choice of law issue as in the case at bar.

The Appellants recognize that the Respondents have asked for immediate consideration of the appealability issue. That may be warranted if the Appellants were actually appealing from the denial of summary judgment, but that is not what is at play here. The Appellants have presented a legitimate basis for the immediate appealability of a ruling on the choice of law that is absolutely central to and arguably dispositive of the litigation. South Carolina law recognizes a “narrow carve-out” to the requirement of a physician-patient relationship, and Georgia law

does not. *See, Hardee v. Bio–Medical Applications of South Carolina, Inc.*, 370 S.C. 511, 636 S.E.2d 629 (2006). South Carolina law has a three-year statute of limitations, and Georgia law has a two-year limitations period. The trial court’s ruling which struck the Appellants’ defenses under Georgia law should be immediately appealable under South Carolina statutory law. Section 14-3-330(1) and Section 14-3-330(2) recognize that such a ruling is subject to an immediate appeal, and for reasons of judicial economy, it should be. The Court is respectfully asked to exercise appellate jurisdiction and allow this appeal to proceed. Accordingly, the Motion to Dismiss Appeal should be denied.⁴

⁴ The Respondents also suggest that the Appellants should have appealed from an earlier order which attempted but did not succeed in obtaining a choice of law adjudication. As indicated, the Appellants attempted to obtain a ruling on the choice of law earlier in the litigation. In addressing what was then brought solely as a motion for summary judgment, Circuit Court Judge Jennifer McCoy issued a form order filed May 9, 2022, in which she merely denied the motion “at this time” because the Respondents had “submitted at least a scintilla of evidence” sufficient to deny the motion. Importantly, Judge McCoy denied summary judgment “at this time,” thereby implicitly allowing for a renewed motion prior to trial, as what occurred. Notably, she did not make any definitive rule on whether South Carolina law or Georgia law applies. In addition, she did not treat the choice of law question as an issue of law for the court to decide. Finally, she applied the “mere scintilla of evidence” standard which is no longer valid law having been overturned by the Supreme Court in *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). Nonetheless, without a ruling from Judge McCoy on the choice of law question, there was no appealable order issued earlier in the case. There was not an appealable order issued until August 24, 2026, and the Appellants filed their appeal the next day.

Respectfully submitted,

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Respondents,

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Appellants.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellants, does hereby certify that service of the **Appellants' Return in Opposition to Respondents' Motion to Dismiss Appeal and for Expedited Consideration** in the above-captioned matter was made upon all counsel of record by email only this the 26th day of August 2026, as follows:

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