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Aug 27 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No.2026-001556

Elvira Perez

Appellant

Vs.

Edgefield Community

Healthcare, LLC

Appellee

/

**APPELLANT’S REPLY IN OPPOSITION
TO THE RESPONDENT’S MOTION TO DISMISS**

Elvira Perez respectfully replies in opposition to the Respondent’s Motion to dismiss and states in support thereof as follows :

- 1- The Defendant submitted a Motion to Dismiss the Appeal claiming that on July 16th, 2026 Ms. Perez’ family removed her from the facility “against

medical advise”¹ therefore the appeal is moot. . The Defendant’s statement lacks candor.

- 2- In support of is Motion To Dismiss the Appeal the Defendant attached as Exhibit A , Ms. Perez’ initial complaint in which she seeks declaratory and injunctive complaint. On page 7 Ms Perez averred that on June 17th, 2026 the defendant informed her that thirty days therefrom it was going to **INVOLUNTARILY TRANSFER** Ms. Perez out of the facility. But in order to perpetrate fraud upon the court Attorney Jerome Bennet Crites III attempted to conceal that inconvenient fact. All well pled facts must be presumed to be true in passing upon a motion to dismiss².
- 3- By Correspondence dated July 22nd, 2026 Ms. Perez informed the Court of Appeals that that on July 9th, 2026 while residing at the Defendant’s nursing home, Ms Perez was assaulted , her face pummeled and subsequent imaging at the emergency room showed several of her ribs , sternum and Left knee fractured. Edgefield Police issued Incident Report EPD260FF000249(01) by police sergeant G. A. Schultz who referred the matter to the South Carolina Attorney General. The Police Sergeant advised the Perez’ that since this was the 2nd violent incident against a resident at

¹ Ms Perez will show hereinbelow that the one proceeding against medical advise was the defendant.

² Doe v. Bishop of Charleston, 407 S.C. 128, 134, 754 S.E.2d 494, 497-98 (2014)

that facility that Ms. Perez ought to be relocated. Attorney Crites also wants to conceal the fact that the massive beating was the nursing home 's way to make it eminently clear that they wanted Ms. Perez out of its nursing home by any means necessary³. All well pled facts must be presumed to be true in passing upon a motion to dismiss ⁴.

- 4- The Jurisdiction of the Court of Common Pleas was sought , inter alia, pursuant to 42 USC 1983 within the meaning The Omnibus Budget Reconciliation Act of 1987 (OBRA), the Federal Nursing Home Act (FNHRA), USC 1396, et seq., The Federal Nursing Home Regulations found in 42 CFR Section 483, Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12111, et seq., The Rehabilitation Act of 1973 and the Federal and South Carolina Constitutions.
- 5- According to the US Supreme Court , the US and SC Constitutions as well as the statutes identified hereinabove unequivocally state that as a Nursing Home resident Ms. Perez has the unequivocal right to : (a) be free from

³ Evidence Rule 701 . If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

⁴ Ibid

chemical restraints⁵ ; and (b) to remain in the facility and must not be transferred out against her will ⁶;

THE ISSUES RAISED BY MS PEREZ ARE NOT MOOT

6- As shown hereinabove, Ms Perez has a right to return to the nursing home when it finally complies with all Constitutional and safety safeguards.

“[A]n appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review⁷.”

7- Secondly , “ an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest⁸. That is the case where, as here, “there is no case law specifically addressing a nursing home’s authority to impose chemical restraints and to involuntarily transfer residents. . ”

WHEREFORE Ms Perez respectfully submits that the relief sought by the Defendant ought to be denied.

⁵ Ms Perez’ complaint state that the nursing home decision to chemically restraint her on February 7th, 2026 and her subsequent complaints to the regulating agencies were used as a pretext by the nursing home to involuntarily transfer her out.

⁶ *Health and Hospital Corporation of Marion County v. Talevski*, 599 U.S. 166 (2023) affirming *Talevski v Health and Hospital Corporation*, 6 F. 4th 713 (7th Cir-2021); *Health and Hospital Corporation v Talevski*, 137 Harv. L. Rev. 380 (2023).

⁷ *Sloan v SCDOT*, 618 SE 2d 876 , 365 SC 299 (2005) citing *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

⁸ *Curtis v State* , 549 SE 591, 345 SC 557 (2001) citing *Berry v. Zahler*, 220 S.C. 86, 66 S.E.2d 459 (1951) (the court recognized that questions of public interest originally encompassed in an action should be decided for future guidance however abstract or moot they may have become in the immediate contest).

Respectfully Submitted ,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the Appellant's Reply in Opposition to the Defendant's Motion to Dismiss the Appeal was served on this 27th Day of August 2026 by emailing a copy thereof to :

Jerome B Crites
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Respectfully Submitted ,

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