THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Case No. 2009-CP-46-5195

Angela Patton, as Next Friend of
Alexia L., a minor,

Appellant,

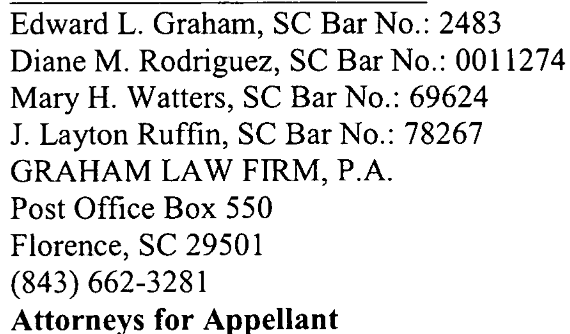
v.

Dr. Gregory A. Miller, Rock Hill Gynecological & Obstetrical Associates, P. A.
and Amisub of South Carolina, d/b/a Piedmont Medical Center,

Respondents.

NOTICE OF APPEAL

Angela Patton in her individual capacity and Angela Patton, as Next Friend of Alexia L., a minor, appeals the Order Granting Partial Summary Judgment of the Honorable S. Jackson Kimball dated July 24, 2013 and entered into record on August 2, 2013 and the Order Denying Plaintiff's Motion to Alter or Amend and for Leave to Amend Complaint of the Honorable S. Jackson Kimball dated November 4, 2013 and entered into record on November 6, 2013.



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SC Court of Appeals

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APPEAL FROM YORK COUNTY
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S. Jackson Kimball, Circuit Court Judge

Case No. 2009-CP-46-5195

Angela Patton, as Next Friend of
Alexia L., a minor   Appellant,

v.

Dr. Gregory A. Miller, Rock Hill Gynecological & Obstetrical Associates, P.A.
and Amisub of South Carolina, d/b/a Piedmont Medical Center,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the above Respondents by depositing a copy of it in the United States Mail, postage prepaid, on January 15, 2014, addressed to their attorney of record:

Ashby W. Davis, Esquire
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5 Hawthorne Park Ct.
Greenville, SC 29615

Attorney for Respondents Dr. Gregory A. Miller and Rock Hill Gynecological & Obstetrical Associates

~and~

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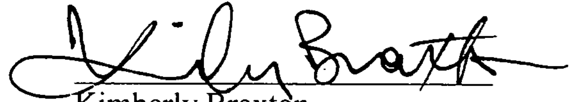

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January 15, 2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

Angela Patton as Next Friend of)
Alexia L[illegible] a minor,)
)
Plaintiff,)
) ORDER GRANTING PARTIAL
vs.) SUMMARY JUDGMENT
)
Dr. Gregory A. Miller, Rock Hill)
Gynecological & Obstetrical Associates,) Case No. 2009-CP-46-05195
P.A. and Amisub of South Carolina,)
d/b/a Piedmont Medical Center,)
)
Defendants.)

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C.C.P. & G.S.
YORK COUNTY, SC

This matter came before me on July 18, 2013, upon motions for partial summary judgment filed by Defendants. Plaintiff was represented by Edward L. Graham. Defendant Amisub of South Carolina, d/b/a Piedmont Medical Center ("Amisub") was represented by William U. Gunn, and Defendants Dr. Gregory A. Miller ("Dr.Miller") and Rock Hill Gynecological & Obstetrical Associates, P.A., ("RHOB") were represented by Ashby W. Davis.

BACKGROUND

The action is one for medical malpractice. Plaintiff originally filed suit against Defendants Dr. Miller and RHOB, seeking damages arising out of her delivery which took place on April 5, 2007 at Piedmont Medical Center. Subsequent to the filing of that suit, Plaintiff filed a Notice of intent to File Suit against Amisub arising out of the same delivery. The action against Amisub, known as Civil Action No. 2012-CP-1214, after the Summons and Complaint was filed, was consolidated into the present action by Consent Order of the parties.

In her suit, the minor Plaintiff sues through her next friend Angela Patton, who is her mother.

In their motions, Defendants seek an order granting partial summary judgment as to all claims made by Plaintiff for medical expenses incurred to date, and any future medical expenses to be incurred prior to the time the Plaintiff reaches the age of majority. The motion is made pursuant to Rule 56 of the SCRCP, and upon the grounds that there is no genuine issue as to any material fact, and that movants are entitled to judgment as a matter of law. In support of the motions, Defendants

rely upon the entire record in the case to date.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004).

SUIT ON BEHALF OF THE MINOR PLAINTIFF ONLY

In this action, the only Plaintiff is "Angela Patton, as Next Friend of Alexia Lumpkin, a minor." A "Next Friend" is one "who appears in a lawsuit to act for the benefit of an incompetent or minor plaintiff, but who is not a party to the lawsuit, and is not appointed as guardian." *Black's Law Dictionary*, "next friend." (9th ed. 2009); *see, also*, Rule 17c, SCRCP.

The United States Supreme Court has held: "The next friend, by whom the suit is brought on behalf of the infant, is neither technically nor substantially the party, but resembles an attorney, or a guardian ad litem, by whom a suit is brought or defended in behalf of another." *Morgan v. Potter*, 157 U.S. 195, 198 (1895) (emphasis supplied). *See, also, Lowe v. City of Shelton*, 851 A.2d 1183, 1189 (Conn. App. 2004). Thus, the present action is not brought in the name of the parent or parents of the minor, but purely for the benefit of the minor Plaintiff, who is alleged to have been injured by the negligence of Defendants.

Plaintiff's parents have not commenced a separate action for medical or other related expenses incurred as a result of Plaintiff's injuries. At the hearing on the motions, Plaintiff's counsel did not dispute that the action is brought by the next friend on behalf of the minor Plaintiff. Counsel also acknowledged that he was asking the court to abrogate the common law rule and to modify existing law in South Carolina to conform to the holdings of more recent cases in other jurisdictions in order to permit recovery of medical expenses by the minor Plaintiff in her own right.

MINOR PLAINTIFF'S CLAIM FOR MEDICAL EXPENSES

Under South Carolina law, a parent is obligated to furnish his or her minor child with "necessary medical service and hospitalization." *Hughey v. Ausborn*, 249 S.C. 470, 476, 154 S.E.2d 839, 841 (1967); *Trident Reg. Med. Ctr. v. Evans*, 317 S.C. 346, 352, 454 S.E.2d 343, 346 (Ct. App.

1995). Based on this principle of law, South Carolina law recognizes that any right of action to recover a minor's medical expenses belongs to a minor's parents, and not to the minor. *Tucker v. Buffalo Cotton Mills*, 76 S.C. 539, 57 S.E. 626 (1907).

In *Tucker*, the Court held that the admission of testimony concerning medical bills paid by the father of a minor was erroneous because the suit was brought on ". . . behalf of the infant alone, and the father suing merely as guardian ad litem for injuries to his infant child cannot recover for expenses incurred for which the father himself is personally liable." 76 S.C. at ____, 57 S.E. at 627.

Later holdings applying South Carolina law are consistent with *Tucker*. *See, e.g., Kapuschinsky v. U.S.*, 259 F.Supp. 1, *7 (D.S.C. 1966), *citing Tucker* ("The parent, *not the child*, can recover for treatment had, or necessary, and expenses incidental thereto *until majority*. .... This court cannot, does not assess for expenses for which the father is liable. . . ."); *Hughey*, 249 S.C. at 475, 154 S.E.2d at 841, *citing Tucker*; *Bridges v. Joanna Cotton Mill*, 214 S.C. 319, 52 S.E.2d 406 (1949) ("[T]he amount paid for medical care and treatment by the parent is not an element of damage and the parent has a cause of action for the recovery of the medical expenses which he has incurred for the care and treatment of such minor."); *Trident Reg. Med. Ctr., supra*, 317 S.C. at 352, 454 S.E.2d at 346 (holding that both parents were liable for a minor child's medical expenses because, under the common law, "a parent is responsible for the support of his or her minor child.").

As was the case in *Tucker*, Plaintiff seeks recovery of medical bills incurred for the care and treatment of Plaintiff, a minor. Also similar to *Tucker*, Plaintiff's parent has sued merely as Plaintiff's next friend, and not also in the parent's individual capacity as well. Thus, pursuant to *Tucker*, *Hughey*, and *Kapuschinsky*, Plaintiff's cause of action on behalf of the minor Plaintiff for damages representing her medical expenses must fail because her medical expenses incurred until she reaches the age of majority are her parents' obligation. Neither of her parents have sued individually to recover such expenses, and the minor Plaintiff may not maintain a cause of action for those expenses in her own right.

PARENTS' CLAIM FOR MEDICAL EXPENSES

This is a medical malpractice action. S.C. Ann. § 15-3-545(A) (1976, as amended) provides that an action for medical negligence must be commenced within three years from the date of the alleged negligent treatment, or within three years from when the same is discovered or reasonably should have been discovered. Further, § 15-3-545(A) provides a statute of repose on medical negligence actions of six years from the date of the occurrence. Ms. Patton delivered Plaintiff on

April 5, 2007, and Defendants' conduct during the delivery forms the basis of the alleged medical negligence in this action.

Based on these facts, Defendants have also sought a ruling by this court that the parents may not now maintain an action for Plaintiff's medical expenses already incurred, and for expenses incurred for the duration of Plaintiff's minority. They assert that the statute of limitations and statute of repose cited herein bar any such claims by the parents.

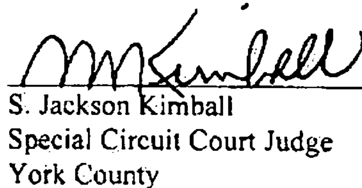
I find and conclude that such a ruling cannot be made in this case, as the parents are not parties to this action. Defendants assert, and have argued in support of their motions, and Plaintiff's counsel acknowledges, that this action is brought by the minor Plaintiff only, through her next friend.

CONCLUSION

Based on the discussion herein, the Motions for Partial Summary Judgment of Defendants are hereby granted, and Plaintiff's claims for her own medical or injury-related expenses incurred to date, and to be incurred during her minority, are dismissed with prejudice. No ruling is made on the question of any action by Plaintiff's parents for medical expenses, past or future.

AND IT IS SO ORDERED.

July 24, 2013



S. Jackson Kimball
Special Circuit Court Judge
York County

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
Angela Patton as Next Friend of Alexia Lumpkin a minor,	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND AND FOR LEAVE TO AMEND COMPLAINT
vs.	)	
Dr. Gregory A. Miller, Rock Hill Gynecological & Obstetrical Associates, P.A. and Amisub of South Carolina, d/b/a Piedmont Medical Center,	)	Case No. 2009CP4605195
Defendants.	)	

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YORK COUNTY, SC

This matter came before me on October 17, 2013, upon motions of the Plaintiff to alter or amend my prior order filed August 2, 2013, or in the alternative for leave to amend her Complaint. The two Motions have been separately stated and filed simultaneously. Representing Plaintiff was J. Layton Ruffin. Representing Defendants were Ashby W. Davis for Defendants Miller and Rock Hill Gynecological & Obstetrical Associates, and William U. Gunn for Defendant Amusub.

BACKGROUND

In this action, Angela Patton, as Next Friend of Alexia Lumpkin, a minor ("Alexia"), who is her daughter, seeks damages against Gregory A. Miller, M.D., his practice group, Rock Hill Gynecological & Obstetrical Associates, P.A., and Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, all arising out of the delivery of Alexia which took place on April 5, 2007. By Order dated July 24, 2013, and filed August 2, 2013, I granted partial summary judgment to all Defendants, as discussed in the Order. The Order held that the minor Plaintiff may not prove or recover medical expenses or other expenses incurred during her minority in this case. Specifically, any claim for medical expenses on behalf of the minor, during her minority, would need to be made by Plaintiff's parents as the parties responsible for the minor's expenses under current South Carolina law.

In the present motions, Plaintiff asks essentially that the Court reverse the ruling of the prior Order, and permit the minor Plaintiff to assert a claim for medical and other expenses incurred on her behalf during her minority. Alternatively, Plaintiff asks the Court for leave to

amend the Complaint to add her mother, Angela Patton, as an individual party plaintiff, in order that the mother can make a claim for the medical expenses, as now provided by current law.

MOTION TO ALTER OR AMEND JUDGMENT

A. Implied waiver – equitable assignment.

Plaintiff moves to alter or amend the prior Order granting partial summary judgment pursuant to Rule 59(e), SCRCP. She contends that the Court failed to address her argument that failure of the mother to assert a claim for medical expenses of the minor constitutes an implied waiver or assignment of the claim to the minor Plaintiff. She argues that by virtue of this implied waiver, the minor Plaintiff may claim such expenses in her own right in this action.

In reviewing the record in this case, I find and conclude that nothing in the record, directly or by inference, supports any claim of an implied waiver, or equitable assignment, of the claim to the minor Plaintiff within or without the limitations period applicable to the parents' claim. I further conclude that even if there was evidence of an implied waiver or equitable assignment, South Carolina does not recognize currently such a claim or doctrine. South Carolina cases are uniform in holding that the parent has the right to recover for medical and other expenses incurred by the minor child, and that the parent must exercise that right within the applicable limitations period. *See Tucker v. Buffalo Cotton Mills*, 76 S.C. 539, 57 S.E. 626 (1907); *Hughey v. Ausborn*, 249 S.C. 470, 476, 154 S.E.2d 839, 841 (1967); *Bridges v. Joanna Cotton Mill*, 214 S.C. 319, 52 S.E.2d 406 (1949); *Trident Reg. Med. Ctr. v. Evans*, 317 S.C. 346, 352, 454 S.E.2d 343, 346 (Ct.App. 1995).

B. Statute of limitations.

Plaintiff also argues that Defendants failed in their Answers to plead the statute of limitations as an affirmative defense, and that the Court did not address that argument in the prior Order. I find and conclude that Plaintiff attempts to raise this argument for the first time in her current motion, and thus, that issue is not properly before the Court. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct.App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.").

Even if the issue was properly presented, I find and conclude that there was no requirement that Defendants plead the statute of limitations. The only claims asserted by Plaintiff were in her representative capacity for the minor Plaintiff, and a claim by the minor for medical expenses was

among those claims. If recovery of medical expenses by the minor was permitted under applicable law, the statute of limitations would not be a defense, as the minor Plaintiff's claim was made within the three-year limitation period. Defendants filed answers denying any liability or damages claimed by the minor Plaintiff, which necessarily included the minor's claim for expenses. That issue became a question of law for the Court in ruling on Defendants' motions for partial summary judgment, and such ruling was unrelated to the statute of limitations. As there was no Plaintiff against whom the statute of limitations had run, Defendants had no reason or obligation to plead the statute of limitations.

The issue of a time-barred claim became relevant only when such claim was sought to be asserted by the Plaintiff's mother. Only then would Defendants have been required to plead the statute of limitations as an affirmative defense to defeat the parental claim.

In keeping with the general denials in their answers, Defendants filed their motions for partial summary judgment in May, 2013. The nature and substance of the Defendants' motions are not related to any affirmative defense required to be set forth in their answers. Further, there is no set time period within which Defendants were required to file motions for summary judgment. Under Rule 56(b), SCRCP, "[a] party against whom a claim . . . is asserted . . . may, at any time, move . . . for a summary judgment in his favor as to all or any part thereof." Accordingly, I find and conclude that Defendants timely filed their motions for partial summary judgment.

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no other matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order.

MOTION FOR TO AMEND COMPLAINT

Subsequent to the Order of July 24, 2013, Plaintiff moved to amend her Complaint, pursuant to Rule 15(c), SCRCP, to add Angela Patton as an additional Plaintiff in her individual capacity. At the hearing on the motion, Plaintiff withdrew the motion as it pertained to Defendant Amisub, but pursued the motion as to Defendants Gregory A. Miller, M.D., and Rock Hill Gynecological & Obstetrical Associates, P.A.

I conclude that Rule 15(c) does not apply to the case at hand. Rule 15(c) only allows "[a]n amendment changing the party *against whom a claim is asserted . . .*", which are Defendants herein, not the plaintiff. (Emphasis added). Additionally, this Rule only addresses the changing, not the addition, of a party. Because Plaintiff is attempting to add a plaintiff, rather than change a defendant, Rule 15(c) is inapplicable. Thus, Plaintiff is not entitled to the amendment sought.

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Even if Rule 15(c) allowed the addition of another plaintiff, Plaintiff would still not be entitled to the relief, because amendment has not been sought within the statute of limitations. Rule 15(c) states that the amendment "... relates back [only if the amendment is made] within the period provided by law for commencing the action . . . ."

S.C. Code Ann. § 15-3-545(A) (1976, as amended) provides that action for medical malpractice must be commenced within three years from the date of the alleged negligent treatment, or within three years from when the same is discovered or reasonably should have been discovered. § 15-3-545(A) also provides a statute of repose on medical negligence actions of six years from the date of occurrence. In this case, Plaintiff has alleged that Defendants' negligent conduct occurred at the time of her delivery on April 5, 2007. Plaintiff did not file her Motion for Leave to Amend until August 15, 2013, over six years later. Thus, since Plaintiff failed to seek leave to amend her Complaint within the statute of limitations, or within the statute of repose, her motion must be denied.

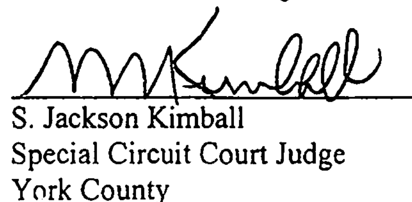
ORDER

Based on the discussion herein, it is ordered as follows:

1. Plaintiff's Motion to Alter or Amend Judgment is denied.
2. Plaintiff's Motion for Leave to Amend Complaint is denied.

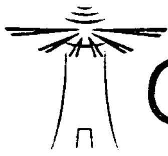
AND IT IS SO ORDERED.

November 4, 2013



S. Jackson Kimball
Special Circuit Court Judge
York County

#4



GRAHAM LAW

Shining a Light on Safety, Guiding the Way to Justice.

Edward L. Graham
Diane M. Rodriguez, RN-JD
Mary H. Watters
J. Layton Ruffin

January 15, 2014

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Angela Patton v. Dr. Gregory A. Miller
Appellate Case No.: 2013-002670

Dear Ms. Kitchings,

We are in receipt of your letter regarding deficiencies with our Notice of Appeal and accompanying Orders and thank you for the same. We have made the necessary corrections. Enclosed for filing please find the original, plus two copies of a redacted Notice of Appeal in the above-referenced case, along with the following:

1. Proof of Service on Respondents
2. A copy of each of the redacted Orders which are to be challenged on appeal

Please return the file-stamped copies to me in the self-addressed, stamped envelope also enclosed for your convenience.

With kindest personal regards, I am

Yours very truly,

EDWARD L. GRAHAM

ELG/kb
Encl.
cc: Ashby W. Davis, Esquire
William U. Gunn, Esquire

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SC Court of Appeals

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