

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Angela Patton as Next Friend of )  
 Alexia L. [REDACTED] a minor, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Dr. Gregory A. Miller, Rock Hill )  
 Gynecological & Obstetrical Associates. )  
 P.A. and Amisub of South Carolina, )  
 d/b/a Piedmont Medical Center, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Case No. 2009-CP-46-05195

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 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 SCRCPP, 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

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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), SCRPC; *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 L. ~~unpink~~ 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." (9<sup>th</sup> ed. 2009); *see, also*, Rule 17c, SCRPC.

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.

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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

  
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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.

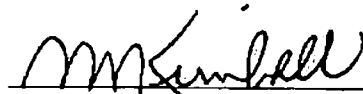
I find and conclude that such a ruling cannot be made in this case, as the parents are not parties to this action. Defendants assert, and have argued in support of their motions, and Plaintiff's counsel acknowledges, that this action is brought by the minor Plaintiff only, through her next friend.

#### 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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