ORIGINAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) 11th JUDICIAL CIRCUIT
)
Martha Lewin Argoe,) CIVIL ACTION NUMBER: 07-CP-32-1981
)
Plaintiff,)
)
vs.) **ORDER GRANTING PARTIAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS THREE RIVERS BEHAVIORAL HEALTH, LLC, PHYLLIS BRYANT-MOBLEY, MD, AND CHERYL C. DODDS, MD**
)
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc. its successor, Phyllis Bryant-Mobley, MD, Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan)
)
Defendants.)

FILED
2014 MAR -7 A 11:00
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Wlle #1

Summary judgment motions filed by five of the defendants in this case were argued on August 29, 2013, with additional submissions provided on October 7, 2013. This Order GRANTS in part and DENIES in part the motions for summary judgment filed by Defendants Three Rivers Behavioral Health, LLC ("Three Rivers"), Dr. Phyllis Bryant-Mobley ("Dr. Bryant-Mobley"), and Dr. Cheryl C. Dodds ("Dr. Dodds"). All of the other named parties in the Second Amended Complaint have been dismissed from this lawsuit. Dr. David A. Steiner and Nurse Ann Burrell were dismissed previously by orders granting summary judgment in their favor. The Court has been informed and is aware that Plaintiff, Ms. Argoe, separately dismissed Psychiatric Solutions, Inc., Aiken Regional Medical Center-Aurora Pavilion, and Carolina Care Plan from the lawsuit.

This final order follows a memorandum order forwarded on October 8, 2013. The Court grants summary judgment in favor of Defendants Three Rivers Behavioral Health,

LLC, Dr. Phyllis Bryant-Mobley, and Dr. Cheryl C. Dodds on Ms. Argoe's sole remaining claim for medical malpractice for any conduct or treatments that took place on or before June 21, 2005. Summary judgment is denied for any claims alleged to have occurred between the entry of the Probate Court's order of June 21, 2005 and the discharge of the plaintiff from in-patient treatment on July 20, 2005. As described in more detail below, the only claims of malpractice that can be pursued are those alleged to have occurred between the entry of the Probate Court's order of June 21, 2005 and the discharge of the plaintiff from in-patient treatment on July 20, 2005.

BACKGROUND FACTS

The background facts were established in the published opinion of the South Carolina Supreme Court in the case of Argoe v. Three Rivers Behavioral Health, L.L.C., et al., 392 S.C. 462, 710 S.E.2d 67 (2011) (Argoe II). Pursuant to S.C. Code Ann. § 44-17-410, Ms. Argoe's husband "filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005." Id. at 466, 710 S.E.2d at 69. "On June 6, 2005, Probate Court Judge Pandora L. Jones-Glover issued an Order of Detention that referenced section 44-17-430 of the South Carolina Code and provided that an 'officer of the peace take the person[, Ms. Argoe,] alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician.'" Id. "On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated [Ms. Argoe] at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44-17-410(2) of the South Carolina Code." Id. at 466, 710 S.E.2d at 70. Dr.

Hooker felt that Ms. Argoe was demonstrating manic symptoms and was putting herself at risk of harm in that she showed no insight or awareness as to the risks of her behavior nor did she have insight into the problems she was causing her family. Therefore, based on his assessment, Dr. Hooker was of the opinion within a reasonable degree of medical certainty that Ms. Argoe possessed a substantial risk of physical harm to herself and that involuntary emergency hospitalization was necessary.

For these reasons, Ms. Argoe was referred to the Aurora Pavilion at Aiken Regional Medical Center for involuntary emergency admission. Id. After Dr. Hooker's evaluation, emergency commitment papers were prepared which authorized the hospitalization of Ms. Argoe at the Aurora Pavilion.

WPM #3

"On June 9, 2005, due to health insurance constraints, [Ms. Argoe] was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (Three Rivers)." Id. at 467, 710 S.E.2d at 70. This transfer to Three Rivers was under the jurisdiction of the probate court as a result of the commitment order for Ms. Argoe. "Based on her initial psychiatric evaluation, which was conducted by [Defendant] Dr. Phyllis Bryant-Mobley, a provisional diagnosis was made that [Ms. Argoe] was suffering from bipolar disorder with manic and psychotic features." Id. (underlined emphasis in original). At that time, Defendant Bryant-Mobley determined that Ms. Argoe's global assessment of functioning (GAF) score was 25, which indicated behavior considerably influenced by delusions and impairment in judgment. Additionally, internist Dr. Nehal Desai evaluated Ms. Argoe at Defendant Bryant-Mobley's request and also found symptoms consistent with paranoid ideation and bipolar disorder.

"On June 13, 2005, [after a motion to change venue from the Orangeburg County Probate Court,] Darlington County Probate Court Judge Marvin Lawson issued an Order for Continued Hospitalization and for Hearing to be held on June 21, 2005." Id. at 467, 710 S.E.2d at 70. Also, on June 13, 2005, "Judge Lawson appointed Dr. Bryant-Mobley and Doris Ann Burrell, a registered nurse, as designated examiners." Id. "On June 14, 2005, [Ms. Argoe] was notified of the hearing and the name of her court-appointed counsel." Id.

On June 21, 2005, pursuant to her appointment as an examiner, Dr. Bryant-Mobley presented her findings concerning Plaintiff's mental health to Judge Lawson. At the hearing, Judge Lawson also considered the testimony of Ms. Argoe's family members, including testimony from her brother and her sister, and the testimony of the court-appointed designated examiners: Dr. Bryant-Mobley and Nurse Burrell. After considering testimony from Dr. Bryant-Mobley, Nurse Burrell, and Ms. Argoe's family members, Judge Lawson found that Ms. Argoe was mentally ill, and "because of her mental condition lacks sufficient insight or capacity to make responsible decisions with respect to her treatment, and because of her condition, there is a likelihood of serious harm to self or others," He ordered Ms. Argoe committed to a mental health facility for in-patient care and treatment, and following this, that Ms. Argoe undergo an out-patient treatment program for a period not to exceed 12 months. (quoting from Judge Lawson's Order dated June 21, 2005.) The Court retained jurisdiction over Ms. Argoe to insure compliance with the Order.

Because Ms. Argoe was refusing medications, on June 13, 2005, Defendant Bryant-Mobley asked for a second opinion and consulted with Dr. Heath, the medical

director of the hospital, as to the appropriateness of forced medication administration in Ms. Argoe's situation. Dr. Heath personally evaluated Ms. Argoe on June 14, 2005, and specifically noted her continued paranoia and hypomanic mood.

Defendant Bryant-Mobley provided care and treatment to Ms. Argoe at Three Rivers until June 27, 2005, when co-Defendant Dr. Cheryl Dodds assumed Ms. Argoe's care. Ms. Argoe ultimately consented to taking her prescribed medications beginning on or about June 16, 2005. "On July 20, 2005, [Ms. Argoe] was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her prescribed medication." Id. at 468, 710 S.E.2d at 70. Defendant Dodds' discharge diagnosis was "bipolar disease, manic with psychosis," which was consistent with Ms. Argoe's initial diagnoses recorded by other evaluating and treating physicians. See Id. (underline emphasis in original).[1]

WPM #5

The legal proceedings in this case are extensive. After completing her court ordered, one-year outpatient treatments, Ms. Argoe filed her first claims in Beaufort County on August 15, 2006 (C/A No. 2006-CP-07-2013). Ms. Argoe filed the present action against her caregivers and treatment facilities in Lexington County on June 6, 2007. The Beaufort action was subsequently consolidated into the Lexington action in September/October, 2007. Ms. Argoe appealed two prior grants of summary judgment motions against her to the Supreme Court. These two appeals resulted in two

[1] The Court notes that the diagnosis of Ms. Argoe's mental disorder did not substantially change prior to or after the determination by the Probate Court that Ms. Argoe was mentally ill and in need of involuntary commitment. On June 9, 2005, Dr. Steiner diagnosed Ms. Argoe with psychosis, not otherwise specified, rule out bi-polar mania with psychotic features and rule out delusional disorder. Upon her admission to Three Rivers, Dr. Bryant-Mobley's provisional diagnosis was "Bi-Polar 1, Manic with Psychotic Features, rule out OCD." Dr. Desai also diagnosed her with behavior which was consistent with bi-polar disorder. Dr. Dodds discharged Ms. Argoe with a finding of "Bi-Polar 1, Manic with Psychosis." After her discharge and during her continued, court ordered out-patient treatments at Coastal Empire, Ms. Argoe's admitting diagnosis was Bi-Polar mania with psychotic features. This working diagnosis did not change when Ms. Argoe was subsequently discharged from the out-patient treatment program at Coastal Empire on August 7, 2006.

published opinions: Argoe v. Three Rivers Behavior Center and Psychiatric Solutions, Its Successor, et al., 388 S.C. 394, 697 S.E.2d 555 (2010), reh'g den. (Sept. 2, 2010) (Argoe I) (finding no attorney-client relationship between Ms. Argo and the attorney for Ms. Argoe's Husband and Son, where the Son held Ms. Argoe's durable power of attorney); and Argoe II (referenced above) (upholding the underlying involuntary commitment proceedings and upholding the grant of summary judgment on various cases of action in favor of Psychiatric Solutions, the successor owner of the Three Rivers facility).

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, __, 671 S.E.2d 79, __ (2008) (citations omitted). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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." S.C.R.C.P. 56(c); see also Helms Realty, Inc. v. Gibson-Wall Co., 363, S.C. 334, 611 S.E.2d 485 (2005). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. Bravis v. Dunbar, 449 S.E.2d 495 (Ct. App. 1994); Dickert v. Metropolitan Life Ins. Co., 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct. App. 1991), (citations omitted), rev'd in part on

other grounds (311 S.C. 218, 428 S.E.2d 700 (1993)). To withstand a motion for summary judgment the non-moving party must submit evidence of a genuine issue of material fact. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

DISCUSSION

Based on the record and the Supreme Court's decision in Argoe II, the involuntary commitment under the applicable Probate Code statutes is "presumed valid" and cannot now be challenged. Argoe II 392 S.C. at 476, 710 S.E.2d at 75. Any attempt now to challenge the underlying commitment orders and the Court's finding that Ms. Argoe was mentally ill and in need of continued in-patient and out-patient psychiatric treatments is untimely and also barred by *res judicata.* It is from this established framework that the discussion on the underlying summary judgment motions starts. This is the same starting point that the Supreme Court used when evaluating the claims in the Argoe II case.

After determining that the underlying commitment was valid, the court in Argoe II addressed whether Judge McMahon properly granted summary judgment on three previously alleged causes of action for false imprisonment, defamation, and intentional infliction of emotional distress. The Supreme Court upheld the dismissal of those claims, summarizing in the final section captioned "Conclusion," that "[b]ecause [Ms. Argoe] failed to timely and properly challenge the probate court's orders, they are presumed valid. Based on these valid orders, we find that Respondent's conduct toward Appellant was lawful, justified, and reasonable." In this court's view, the

Respondent[2] in Argoe II was in the same position as Three Rivers, its employees, and the private physicians treating Ms. Argoe at Three Rivers.

Following Argoe II, Ms. Argoe was granted permission to amend her Complaint to assert the cause of action for medical negligence. She lodged that assertion against all three of the remaining defendants: Three Rivers Behavioral Health, LLC, Dr. Bryant-Mobley, and Dr. Dodds. The court recognizes, for purposes of the *res judicata* evaluation, that the plaintiff's sole legal theory of recovery is now medical malpractice, not false imprisonment, defamation, or intentional infliction of emotional distress.

Ms. Argoe has retained various experts related to the amended Complaint, and the court has reviewed the depositions that were supplied at the argument on summary judgment. The court has also considered the well-stated arguments of counsel, all briefs submitted, the pleadings, and the other written submissions in the file. Basically, in the light most favorable to the plaintiff, her experts are saying that Ms. Argoe should never have been have been involuntarily committed and that it was negligent to keep her against her will, particularly for the length of time that she was kept. However, her primary expert, Dr. Davis, acknowledged on several occasions that he did not complain about an initial detention of Ms. Argoe for up to a couple of days to evaluate her, based on the record.

Typically, any inconsistency in a witness' testimony such as this with Dr. Davis would require the court to defer to a fact finder to resolve the inconsistencies. This case is a medical malpractice case. It requires expert opinion to establish the standard of care, the deviation from the standard, and (at least to some extent) the damages that

[2] Psychiatric Solutions, Inc., the successor owner of the Three Rivers facilities.

proximately flow from that deviation. See Linog v. Yampolsky, 376 S.C. 182, 656 S.E.2d 355 (2008).

This court is not able to reconcile the rulings of the Supreme Court in Argoe II with the assertions that the involuntarily commitment of Ms. Argoe constituted medical malpractice. This court accepts the argument of the remaining three defendants that they are entitled to a determination that it is *res judicata* and the law of this case that the commitment process was "lawful, justified, and reasonable." In the court's view, the elements of *res judicata* are satisfied in this medical malpractice case.

The court finds that the reasoning announced in Vaughan v. McLeod Regional Medical Center, 372 S.C. 505, 642 S.E.2d 744 (2007), would extend to grant absolute, quasi-judicial immunity to physicians and mental health facilities acting within the scope of judicial directives in an involuntary commitment setting. In Vaughn, the Supreme Court gave the appointed physician absolute quasi-judicial immunity from claims arising from a clinical finding of incompetency. In discussing common-law immunity, the Court stated:

> Because one of the guardian's roles is to act as a representative of the court, and because this role can only be fulfilled if the guardian is not exposed to a constant threat of lawsuits from disgruntled parties, a finding of quasi-judicial immunity is necessary. Such a grant of immunity is crucial in order for guardians to properly discharge their duties. The immunity to which guardians ad litem are entitled is an absolute quasi-judicial immunity.

Vaughn at 511-12, 642 S.E.2d at 748 (citation omitted). The Vaughn case agrees with the U.S. Supreme Court that "[c]ourt appointed examiners are essentially an arm of the judiciary." Id. at 512, 642 S.E.2d at 748 (citing Briscoe v. LaHue, 460 U.S. 325, 335, 103. S.Ct. 1108, 1115-16 (1983) "The common law provided absolute immunity from

subsequent damages liability for all persons—governmental or otherwise—who were integral parts of the judicial process.") The Vaughn court pointed out the clear public policy quandary that "[i]f court-appointed examiners in guardianship proceedings are not afforded immunity, the exposure to liability will have a chilling effect on future acceptances of such appointments." Vaughn at 512, 642 S.E.2d at 748. Therefore, South Carolina follows the rule that "a physician, who is a court-appointed examiner in a guardianship proceeding, has absolute quasi-judicial immunity for actions and opinions within the scope of the appointment." Id.

Therefore, it is the ruling of this court that Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds are entitled to partial summary judgment for any acts or omissions that were within the scope of judicial directives in an involuntary commitment proceeding. This ruling is based upon and supported by Argoe II and the final ruling by Judge Lawson that Ms. Argoe was adjudicated mentally ill and in need of psychological treatment. The difficulty then becomes defining the scope of the quasi-judicial immunity and determining what falls within the borders of judicial directives.

After finding that a court-appointed physician in South Carolina has absolute quasi-judicial immunity for actions and opinions within the scope of the appointment, the Vaughn court started the last full paragraph before the "Conclusion" section with the direction that "[the Court] must determine from the nature of [the appointed physician's] actions, not merely by his status as a court-appointed examiner, whether the absolute quasi-judicial immunity extends to the challenged acts in this case." Id. at 513, 642 S.E.2d at 748. That is, in this Court's view, while Vaughn clearly confirms that quasi-judicial immunity applies to all court-appointed examiners and medical professionals,

the duration of the immunity may be limited by the facts in a particular case. A medical professional or medical facility is not entitled to blanket immunity for acts of malpractice simply because the patient came to be treated as a result of involuntary commitment proceedings. This court accepts that under the correct circumstances, a malpractice claim may be raised, even when the patient came into contact with the medical provider because of an involuntary commitment proceeding. Logically, the determination of whether the claim can survive depends on a case-by-case evaluation.

In this case the Court finds that the only reasonable reading of this record, in light of Argoe II and Judge Lawson's order, is that Ms. Argoe is precluded from recovering for acts and omissions alleged of Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds, up to and including those that occurred on June 21, 2005. In addition, because on June 21, 2005, the Court found Ms. Argoe mentally ill and in need of in-patient and out-patient psychiatric treatments, these Defendants are entitled to absolute quasi-judicial immunity regarding the diagnosis of mental illness, and Ms. Argoe is precluded from recovering for an alleged misdiagnosis of mental illness by these Defendants from June 22, 2005, to Ms. Argoe's discharge on July 20, 2005.

Due to the stringent standards applicable to summary judgment decisions, there appear to be genuine issues of material fact related to whether and to what extent the plaintiff can recover for alleged acts of malpractice associated with the continued in-patient hospitalization and treatment for the period from June 21, 2005, through the date of Ms. Argoe's subsequent discharge from in-patient care on July 20, 2005. This Court takes no position regarding the sufficiency of any claims for medical negligence that Ms. Argoe may argue occurred during the continued in-patient treatment. However, the

Court does find that the Supreme Court has already determined in Argoe II, and thus it is another established fact in this case, that the plaintiff voluntarily consented to taking her prescribed medications when she was released to out-patient care on July 20, 2005.[3] Therefore, to the extent that there may be any claim against Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds for acts or omissions occurring *after* July 20, 2005, the court finds that the only reasonable reading of this record is that the plaintiff cannot recover for any such conduct.

THEREFORE, IT IS ORDERED that Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds are GRANTED partial summary judgment so that they cannot be held liable for any acts or omissions that occurred prior to the issuance of the Probate Court's order on June 21, 2005, nor for any acts or omissions that occurred *after* the discharge of the plaintiff from in-patient treatment on July 20, 2005.

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IT IS FURTHER ORDERED that subject to the above stated findings and rulings, summary judgment is DENIED regarding the time period of Ms. Argoe's continued in-patient commitment from June 22, 2005, to July 20, 2005. At trial, Ms. Argoe may attempt to prove medical negligence by the remaining Defendants, Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds, regarding their treatment of Ms. Argoe's mental illness during the continued in-patient commitment period only.

AND IT IS SO ORDERED.

William P. Keesley
Circuit Judge

March 6, 2014

[3] The court understands that the record includes assertions that Ms. Argoe eventually voluntarily took medications while receiving in-patient treatment, but her deposition creates a genuine issue of material fact as to whether this was the result of coercion. The court also recognizes that the opinion in Argoe II can be read as finding that the plaintiff voluntarily took some medications while receiving in-patient treatment. Again, since it does not appear to be definitive, the proper course of action, in this court's view, is to deny summary judgment in part at this stage.

(9)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

FILED
2014 MAR 21 A 10:32
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

ORIGINAL

Martha Lewin Argoe,) C/A No. 2007-CP-32-01981
)
Plaintiff,)
)
Versus) **ORDER GRANTING SUMMARY JUDGMENT AS TO DAVID A. STEINER, MD.**
)
Three Rivers Behavioral Health, LLC)
and Psychiatric Solutions, Inc., its)
successor; Phyllis Bryan-Mobley, MD;)
David A. Steiner, MD; Cheryl C. Dodds,)
MD; Doris Ann Burrell, RN; and)
Carolina Care Plan,)
)
Defendants.)

Summary Judgment is granted in favor of Defendant David A. Steiner, MD (hereinafter "this Defendant" or "Dr. Steiner") on the claim of medical negligence (the only remaining claim of the Plaintiff's complaint), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

WPL
#1

STANDARD OF REVIEW

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 a judgment as a matter of law." Rule 56(c), SCRCP. The moving party need not support its motion with affidavits or other materials negating the opponent's claims; instead, the moving party can simply point to the absence of evidence to support the nonmoving party's claims. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537 (1991). Once the moving party satisfies its burden, the nonmoving party must demonstrate specific facts showing that there is a genuine issue for trial. Id.

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App. 2003). Instead, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(c) SCRCP; Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct.App. 1999). 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).

"This Court has established that '[t]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.'" Hansson v. Scalise Builders of S.C. and Sam Scalise, 374 S.C. 352, 650 S.E.2d 68 (2007) (citing Baughman v. Amer. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)). A court cannot properly deny a defendant's motion for summary judgment after only finding a genuine issue of material fact as to one element of the plaintiff's claim. Id. Under Baughman, to withstand a motion for summary judgment, the court must determine that a genuine issue of material facts exists for each element of the plaintiff's case. Id.

FACTUAL/PROCEDURAL HISTORY

The Plaintiff, Martha Lewin Argoe ("Plaintiff") was married to G. Lewis Argoe, Jr. ("Argoe, Jr.") for forty-two (42) years. They had one child, George Lewis Argoe, III ("Argoe, III"). On or about April 20, 2005, Argoe, Jr. went to Orangeburg

Mental Health Center and spoke with a counselor about involuntarily committing Plaintiff to a psychiatric facility. Plaintiff gave her son her Power of Attorney a year prior to this incident.

This lawsuit has taken various forms over the years. The South Carolina Supreme Court has ruled on two appeals filed by the Ms. Argoe concerning the same factual scenario as the lawsuit in its current posture. In the second reported appellate decision, the Supreme Court set forth the following factual background.

> Pursuant to section 44–17–410 of the South Carolina Code, [Ms. Argoe's] husband (Husband) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005.
>
> On June 6, 2005, Probate Court Judge Pandora L. Jones–Glover issued an Order of Detention that referenced section 44–17–430 of the South Carolina Code and provided that an "officer of the peace take the person [Ms. Argoe] alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician."
>
> On June 7, 2005, deputies with the Orangeburg County Sheriff's Department transported [Ms. Argoe] to the emergency room of The Regional Medical Center of Orangeburg (TRMC). At 3:35 p.m., [Ms. Argoe] was given a physical and mental evaluation. [Ms. Argoe] was discharged at 5:13 p.m. with a diagnosis of "Altered Mental Status" and instructions for her to return the following day for further evaluation. Subsequently, [Ms. Argoe]was driven home by law enforcement.
>
> On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated [Ms. Argoe] at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44–17–410(2) of the South Carolina Code. In this document, Dr. Hooker certified that inpatient psychiatric hospitalization was medically necessary for [Ms. Argoe] and identified Aurora Pavilion Behavioral Health Services (Aurora), a division of the Aiken Regional Medical Center, as the facility that would accept [Ms. Argoe] for further treatment. [Ms. Argoe's] medical records verify that she was involuntarily admitted to that facility on June 8, 2005 at 5:45 p.m. An attending physician at Aurora [Dr. Steiner] completed the requisite Physician Certification form stating that he certified that "the inpatient psychiatric hospital admission was

> medically necessary for psychiatric treatment, which could reasonably be expected to improve the patient's condition."
>
> On June 9, 2005, due to health insurance constraints, [Ms. Argoe] was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (Three Rivers). Based on her initial psychiatric evaluation, which was conducted by Dr. Phyllis Bryant–Mobley, a provisional diagnosis was made that [Ms. Argoe] was suffering from bipolar disorder with manic and psychotic features. On June 10, 2005, Three Rivers completed the Notification of Emergency Admission and Appointment of Designated Examiners.
>
> On June 13, 2005, [after a motion to change venue from the Orangeburg County Probate Court, the] Darlington County Probate Court Judge Marvin Lawson issued an Order for Continued Hospitalization and for Hearing to be held on June 21, 2005. That same day, Judge Lawson appointed Dr. Bryant–Mobley and Doris Ann Burrell, a registered nurse, as designated examiners. On June 14, 2005, Appellant was notified of the hearing and the name of her court-appointed counsel.
>
> On June 21, 2005, Judge Lawson conducted a hearing at which the court-appointed examiners presented their findings regarding [Ms. Argoe's] mental health. [Ms. Argoe] and her attorney were in attendance and participated in the hearing. On that same day, Judge Lawson issued an Order for Continued Treatment with mandatory outpatient treatment to follow at the Orangeburg County Mental Health Facility for a period not to exceed twelve months.
>
> On July 8, 2005, Probate Court Judge Jones–Glover issued an order appointing Dr. Cheryl Dodds, one of [Ms. Argoe's] treating physicians at Three Rivers, to examine [Ms. Argoe] as to whether she needed a guardian and/or a conservator. Although Dr. Dodds believed [Ms. Argoe] to be an "incapacitated person" and in need of a guardian/conservator, she could not definitively determine whether [Ms. Argoe's] condition was temporary or permanent.
>
> On July 20, 2005, [Ms. Argoe] was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her pre-scribed medication. Dr. Dodds's discharge diagnosis was "bipolar disease, manic with psychosis."

Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 465-68, 710 S.E2d 67, 69-70 (2011) (Argoe II) (underlined emphasis in original; internal footnotes omitted). Pursuant to the June 21, 2005, Order from Probate Judge

Lawson, Ms. Argoe completed her one-year of out-patient therapy around July/August 2006. Soon after completing her outpatient treatment, Ms. Argoe commenced litigation.

The Supreme Court in Argoe II traced the history of the involuntary commitment process. It stated:

> All of Appellant's [Ms. Argoe's] arguments emanate from the following two theories: (1) the Order of Continued Hospitalization (June 13, [2]005) and the Order of Continued Treatment (June 21, 2005) were invalid as they were based on the void initial Order of Detention (June 6, 2005); and (2) there was no factual basis to substantiate the findings underlying the Order for Continued Treatment (June 21, 2005). Without a "lawful" probate court order, Appellant [Ms. Argoe] claims Respondent [Psychatric Solutions, Inc. – which was in the same position as Three Rivers] was not justified in detaining her . . . and it was not reasonable for Respondent to detain her.

The court in Argoe II found that the challenge to the underlying commitment orders was untimely and also barred by *res judicata*. In 2008, Ms. Argoe had filed a Petition to Vacate the Commitment Proceedings. A Probate Judge assigned to the case denied the Petition. That decision was appealed to the circuit court, and The Honorable Diane S. Goodstein affirmed the Probate Judge's decision. The Supreme Court found that the challenge to the commitment proceedings was not timely, that the order of Judge Goodstein constituted the "final adjudication regarding the validity of the commitment proceedings," and that there was a factual basis for the commitment.

After determining that the commitment was valid, the court in Argoe II turned its focus on whether a previous granting of summary judgment by another circuit judge was proper. It then analyzed each of the three causes of action that

were before the court at that time (false imprisonment, defamation, and intentional infliction of emotional distress), and it upheld the dismissal of those claims.

In the section captioned "Conclusion," the Supreme Court wrote, "Because Appeallant [Ms. Argoe] failed to timely and properly challenge the probate court's orders, they are presumed valid. Based on these valid orders, we find that Respondent's conduct toward Appellant was lawful, justified, and reasonable." In this court's view, the Respondent in Argoe II was in the same position as Three Rivers and the employees of Three Rivers.

Following Argoe II, Ms. Argoe was granted permission to amend her Complaint so as to assert medical negligence (malpractice). She lodged that assertion against Dr. Steiner, in addition to Three Rivers Behavioral Health, LLC, Dr. Bryant-Mobley, and Dr. Dodds. The court recognizes, for purposes of the *res judicata* evaluation, that the Plaintiff's legal theory of recovery is now medical malpractice, not false imprisonment, defamation, or intentional infliction of emotional distress.

WPC #6

DISCUSSION

Ms. Argoe has retained various experts related to the amended Complaint, and the court has reviewed the depositions that were supplied at the argument on summary judgment. The court has also considered the well-stated arguments of counsel, all briefs submitted, the pleadings, and the other written submissions in the file. Basically, in the light most favorable to the Plaintiff, her experts are saying that Ms. Argoe should never have been have been involuntarily committed and that it was negligent to keep her against her will, particularly for the length of time that she was kept. However, her primary expert, Dr. Davis, acknowledged on

several occasions that he did not complain about an initial detention of Ms. Argoe for up to a couple of days to evaluate her, based on the record.

Typically, any inconsistency in a witness' testimony such as this with Dr. Davis would require the court to defer to a fact finder to resolve the inconsistencies. However, this case is a medical malpractice case. It requires expert opinion to establish the standard of care, the deviation from the standard, and (at least to some extent) the damages that proximately flow from that deviation.

This court is not able to reconcile the rulings of the Supreme Court in Argoe II with the assertions that the involuntarily commitment and treatment of Ms. Argoe by Dr. Steiner constituted medical malpractice. This court accepts the argument of the Defendant that he is entitled to a determination that it is *res judicata* and the law of this case that the commitment process was "lawful, justified, and reasonable." In the court's view, the elements of *res judicata* are satisfied in this medical malpractice case.

WPR #7

The only evidence related to Dr. Steiner is that he conducted an initial evaluation of the Plaintiff at Aurora, following a determination by Dr. Hooker that emergency admission was necessary. It was Dr. Hooker at Orangeburg Mental Health who issued the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44–17–410(2). Dr. Hooker had the Plaintiff transferred to Aurora. Dr. Steiner estimated a ten-day length of stay for the involuntary commitment. He noted in his records that he would speak with her son (whom she trusted) the following day. However, because her health insurance (Carolina Care Plan) would not cover her stay at Aurora, Plaintiff was transferred out of Aurora the next day (June 9, 2005) to Three Rivers Behavioral Health Center

in Lexington County. Dr. Steiner did not participate in any treatment of the Plaintiff before her arrival at Aurora or after her departure for Three Rivers.

Neither Aurora nor Dr. Steiner had any connection with Three Rivers. Ms. Argoe refused all medication while she was at Aurora. So, the only evidence alleged against Dr. Steiner dealt with his initial assessment and, at most, the 26 ½ hours that the plaintiff might have been considered to be under his care at Aurora.

The Supreme Court ruled in Argoe II that "[Ms. Argoe] is procedurally barred from challenging the validity of the underlying orders," including and expressly noting the June 21, 2005, continued commitment order. Id. at 470, 710 S.E.2d at 71. Furthermore, "[Ms. Argoe is] precluded from collaterally attacking the underlying commitment orders." Id. At 471, 710 S.E.2d at 72. These findings by the Supreme Court are the established law of this case. It has been judicially determined that Ms. Argoe's commitment through June 21, 2005, was valid. Dr. Steiner's association with Ms. Argoe ended long before June 21.

Dr. Steiner was legally obligated to perform the initial assessment of the Plaintiff pursuant to the Probate Court's Order. The only evidence in this record is that all of Dr. Steiner's actions were undertaken pursuant to the Order. He did not have the option to disregard the Order of the Probate Court. Dr. Steiner was serving as an arm of the judiciary and he is immune from any act or omission performed within the scope of the Probate Court Order, subject to the caveat discussed below.

Aside from the *res judicata* issue, the court has considered whether there is any evidence that would allow a medical negligence claim to survive against Dr. Steiner. In Vaughan v. McLeod Regional Medical Center, 372 S.C. 505, 642 S.E.2d

744 (2007), the court discussed absolute, quasi-judicial immunity to physicians and mental health facilities acting within the scope of judicial directives in an involuntary commitment setting. It is the ruling of this court that Dr. Steiner is entitled to partial summary judgment for any acts or omissions that were within the scope of judicial directives in an involuntary commitment proceeding. The inquiry then turns to the determination of the extent of protection and to a determination of what falls within the borders of the scope of judicial directives.

The last full paragraph in Vaughan, before the Conclusion section, reads: "**We must determine from the nature of Dr. [ ]'s actions, not merely by his status as a court-appointed examiner, whether the absolute quasi-judicial immunity extends to the challenged acts in this case.**" [Emphasis added.]

WPL #9

This court accepts the argument of Plaintiff's counsel that a medical professional is not entitled to blanket immunity for acts of malpractice simply because the patient initially came to be treated as a result of involuntary commitment proceedings. Vaughan acknowledges that concept in the quotation above. So, this court accepts that a malpractice claim may be raised, even when the patient came into contact with the medical provider because of an involuntary commitment proceeding. Logically, the determination of whether the claim can survive depends on a case-by-case evaluation.

Here, the court finds that the only reasonable reading of this record, in light of Argoe II, is that the Plaintiff is precluded from recovering for acts or omissions of Dr. Steiner.[1] Despite the stringent standards applicable to summary judgment

[1] The court has previously granted summary judgment related to acts or omissions of others that took place up to and including those that occurred on June 21, 2005.

decisions, there do not appear to be genuine issues of material fact related to whether and to what extent the Plaintiff can recover for alleged acts of malpractice associated with the continued hospitalization and treatment authorized by Dr. Steiner.

A medical negligence action requires the plaintiff to provide evidence that the physician departed from the recognized and generally accepted standards followed by competent practitioners in the physician's field under same or similar circumstances. Melton v. Medtronic, Inc., 389 S.C. 641, 655, 698 S.E. 2d 886, 893 (2010). The plaintiff must provide evidence that deviations from the standard practice and procedures were the proximate cause of the plaintiff's alleged injuries. Id. Here, Dr. Steiner was only involved in the initial assessment of the Plaintiff after her referral to Aurora by another doctor and pursuant to a valid commitment order of the Probate Court. Plaintiff's expert admitted in his deposition that he could not find fault for a period of a couple of days for the initial observation and investigation of the Plaintiff and the allegations that her family made. Since the only evidence is that Dr. Steiner's involvement occurred entirely within the window of that "couple of days," there is no expert testimony to support the Plaintiff's contention that Dr. Steiner breached the standard of care. Therefore, no genuine issue of material fact exists to show that Dr. Steiner deviated from standard practices and procedures, nor that his initial assessment proximately caused any injury to the Plaintiff.

CONCLUSION

This Court grants Summary Judgment to Dr. Steiner on the Plaintiff's medical negligence claim. The grant of summary judgment is based on the

determination that there is no evidence that Dr. Steiner was acting outside the ambit of the Probate Court Order during the commitment of the Plaintiff. There were orders issued before and after Dr. Steiner dealt with the Plaintiff. There is also no evidence that would allow the Plaintiff to overcome the quasi-judicial immunity afforded to a physician in these circumstances. There is no expert evidence of a deviation from the standard of care by Dr. Steiner, nor any evidence that any alleged deviation proximately caused recoverable damages to the Plaintiff.

THEREFORE, IT IS ORDERED that summary judgment be granted to Dr. Steiner and all claims against him are hereby dismissed.

IT IS SO ORDERED.

William P. Keesley

Judge William P. Keesley
Eleventh Judicial Circuit

March 19, 2014

#11

ORIGINAL

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

FILED
2014 JUN -9 P 12:55
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Martha Lewin Argoe,

Plaintiff,

-vs-

Three Rivers Behavioral Health, LLC, et al.,

Defendants.

ORDER ON RECONSIDERATION

Case Number 2007-CP-32-01981

The court granted summary judgment in favor of the defendants David A. Steiner, M.D. and Doris Ann Burrell, RN. It also granted partial summary judgment in favor of the defendants Three Rivers Behavioral Health, LLC, Phyllis Brant-Mobley, M.D., and Cheryl C. Dodds, M.D. The plaintiff seeks reconsideration and to have the court alter or amend those orders. The motions are denied.

Upon receiving the motions, the court notified the attorneys that it would decide the issues on written submissions, without further oral argument, pursuant to Rule 59(f), SCRCP. Each party relevant to the motions for reconsideration has now either provided briefs or notified the court that no further submissions are being forwarded.

This is a difficult case, with an extremely protracted history. Each of the attorneys makes very good arguments. Frankly, having reconsidered the matter and recognizing that others (including an appellate court) may view the matters differently, the court does not feel that it can state its reasoning and rulings any better than it has in the memorandum order and the final orders.

Most significantly, this court is not ruling in a vacuum. It has two prior orders from the appellate court which have established certain things that this court feels are binding upon it and the parties. Recognizing the scintilla rule, this court again states that the rulings, particularly those in Argoe II, have a substantial impact upon what can be presented in this case.

As for the *res judicata* issues, the court has acknowledged in the orders that the causes of action here are for medical negligence, which is a different legal theory than the ones previously asserted. The court allowed the plaintiff to make that amendment over the defendants' objections. In considering *res judicata* principles, the citations and authority provided by plaintiff's learned counsel are recognized. The court acknowledges that the parties involved in the appeals are somewhat different, though there is overlap. The underlying factual dispute and alignment of interests have not changed. To the extent that the court applied *res judicata*, it believes that its rulings in that regard have been stated as well as the court knows how to do so. There has to be a reconciliation of the prior decisions by the Supreme Court and the matters currently before the court, and this court has attempted in good faith to make its rulings in the proper context. The court sees no new information or arguments in the motions for reconsideration that were not considered and ruled upon in the previous orders.

As for the arguments about the court's evaluation of expert testimony, it is stated in the orders that the record may reflect inconsistency in the testimony of the plaintiff's experts and that those situations normally dictate that the case be allowed to go forward to a fact finder to resolve any factual inconsistency. The plaintiff asserts that the court has misconstrued or misunderstood the testimony of the plaintiff's experts. Having

reconsidered the matter, the court believes that it has accurately stated what the experts said in depositions and that the court has stated why it ruled as it did. Again, the evaluation of the evidence cannot be done in a vacuum here because the Supreme Court has already made findings. The Supreme Court has affirmatively stated that the plaintiff has waived her ability to object to certain things. The higher court has determined that the plaintiff's failure to challenge the probate courts' orders of commitment and continued hospitalization cause those orders to be presumed valid. The Supreme Court has set out a detailed factual history and, in this court's view, has established certain determinations of fact that are binding on this court and the parties. Having reconsidered the matter, this court finds no basis to modify its previous orders regarding its evaluation of the evidence.

As for the arguments related to immunity, the court has reconsidered the situation and sees no basis for altering or amending the prior orders. Basically, the prior orders recognized that the mere fact that a patient was involuntarily committed does not automatically bar a medical negligence claim. As noted previously, this court allowed the complaint to be amended to assert medical negligence. This court has granted partial summary judgment as to three defendants, which allows pursuit of the medical negligence claims against them, albeit that the conduct in question has been reduced to a limited period of time. As stated in the initial memorandum order:

> This court accepts the argument of plaintiff's counsel that a medical professional or medical facility is not entitled to blanket immunity for acts of malpractice simply because the patient came to be treated as a result of involuntary commitment proceedings. . . . So, this court accepts that a malpractice claim may be raised, even when the patient came into contact with the medical provider because of an involuntary commitment proceeding. Logically, the determination of whether the claim can survive depends on a case-by-case evaluation.

Taking the prior rulings that it found to be binding on this court and the parties, a determination was made that the plaintiff can pursue her medical negligence claims against Three Rivers Behavioral Health, LLC, Dr. Bryant-Mobley, and Dr. Dodds for a brief period. This court explained its reasoning that a medical negligence claim can survive summary judgment against these three defendants for the period between entry of the probate court order of continued commitment (which was done on June 21, 2005) to her release from in-patient hospitalization on July 20, 2005. The court reaffirms that ruling.

The plaintiff's Brief challenges any finding that Dr. Dodds is entitled to immunity. It is the court's understanding that Dr. Dodds did not begin any involvement with the plaintiff until June 27, 2005. Since the entire time period when Dr. Dodds was involved with the plaintiff falls within the period that the court allowed the plaintiff to pursue a medical negligence claim against her, the court thought it was clear that it was not granting summary judgment in favor of Dr. Dodds on the basis of immunity.

#4

As for the other challenges to the rulings on immunity, the court has reconsidered the arguments and denies the motion to alter or amend.

THEREFORE, IT IS ORDERED that the plaintiff's motions for reconsideration and to alter or amend are denied.

AND IT IS SO ORDERED.

William P. Keesley
Circuit Judge

June 6, 2014

FORM 4

TE OF SOUTH CAROLINA
UNTY OF LEXINGTON
N THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2007CP3201981

PLAINTIFF(S)	DEFENDANT(S)
Martha Lewin Argoe	**Glenn Hooker** **Psychiatric Solutions Inc** **Three Rivers Behavioral Health LLC**
Submitted by:	**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ 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.**

6/20/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **20th of June 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Daniel Dodson
1722 Main St Suite 200 Columbia, SC 29201-2851

ATTORNEY(S) FOR THE PLAINTIFF(S)

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Lawrence S. Kerr 634 Hatrick Road Columbia, SC 29209
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Andrew N. Cole PO Box 12487 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

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.

ORIGINAL

(9)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) 11th JUDICIAL CIRCUIT

FILED
2014 MAR 21 A 10:33
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Martha Lewin Argoe,) CIVIL ACTION NUMBER: 07-CP-32-1981

Plaintiff,

vs.

Three Rivers Behavioral Center and Psychiatric Solutions, Its Successor; Phyllis Brant-Mobley, MD; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan

Defendants.

ORDER GRANDING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT DORIS ANN BURRELL, RN

Five named defendants in the above-referenced matter filed motions for summary judgment, which were argued before me on August 29, 2013. This order grants the motion for summary judgment in favor of Defendant Doris Ann Burrell, RN (hereinafter "Nurse Burrell") as I find her protected by qualified judicial immunity and there is no genuine issue of material fact that would overcome the grant of immunity.

WM #1

BACKGROUND FACTS

This is a medical malpractice claim arising from the involuntary commitment of Plaintiff in June of 2005. The South Carolina Supreme Court has ruled already on two appeals filed by the Ms. Argoe, the Plaintiff, in this case. The second reported appellate decision sets forth the factual background upon which I rely in part.

> Pursuant to section 44–17–410 of the South Carolina Code, [Ms. Argoe's] husband (Husband) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005.

On June 6, 2005, Probate Court Judge Pandora L. Jones–Glover issued an Order of Detention that referenced section 44–17–430 of the South Carolina Code and provided that an "officer of the peace take the person [Ms. Argoe] alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician."

On June 7, 2005, deputies with the Orangeburg County Sheriff's Department transported [Ms. Argoe] to the emergency room of The Regional Medical Center of Orangeburg (TRMC). At 3:35 p.m., [Ms. Argoe] was given a physical and mental evaluation. [Ms. Argoe] was discharged at 5:13 p.m. with a diagnosis of "Altered Mental Status" and instructions for her to return the following day for further evaluation. Subsequently, [Ms. Argoe]was driven home by law enforcement.

On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated [Ms. Argoe] at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44–17–410(2) of the South Carolina Code. In this document, Dr. Hooker certified that inpatient psychiatric hospitalization was medically necessary for [Ms. Argoe] and identified Aurora Pavilion Behavioral Health Services (Aurora), a division of the Aiken Regional Medical Center, as the facility that would accept [Ms. Argoe] for further treatment. [Ms. Argoe's] medical records verify that she was involuntarily admitted to that facility on June 8, 2005 at 5:45 p.m. An attending physician at Aurora completed the requisite Physician Certification form stating that he certified that "the inpatient psychiatric hospital admission was medically necessary for psychiatric treatment, which could reasonably be expected to improve the patient's condition."

WPC
#2

On June 9, 2005, due to health insurance constraints, [Ms. Argoe] was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (Three Rivers). Based on her initial psychiatric evaluation, which was conducted by Dr. Phyllis Bryant–Mobley, a provisional diagnosis was made that [Ms. Argoe] was suffering from bipolar disorder with manic and psychotic features. On June 10, 2005, Three Rivers completed the Notification of Emergency Admission and Appointment of Designated Examiners.

On June 13, 2005, [after a motion to change venue from the Orangeburg County Probate Court, the] Darlington County Probate Court Judge Marvin Lawson issued an Order for Continued Hospitalization and for Hearing to be held on June 21, 2005. That same day, Judge Lawson appointed Dr. Bryant–Mobley and Doris Ann Burrell, a registered nurse, as designated examiners. On June 14, 2005, Appellant was notified of the hearing and the name of her court-appointed counsel.

> On June 21, 2005, Judge Lawson conducted a hearing at which the court-appointed examiners presented their findings regarding [Ms. Argoe's] mental health. [Ms. Argoe] and her attorney were in attendance and participated in the hearing. On that same day, Judge Lawson issued an Order for Continued Treatment with mandatory outpatient treatment to follow at the Orangeburg County Mental Health Facility for a period not to exceed twelve months.
>
> On July 8, 2005, Probate Court Judge Jones–Glover issued an order appointing Dr. Cheryl Dodds, one of [Ms. Argoe's] treating physicians at Three Rivers, to examine [Ms. Argoe] as to whether she needed a guardian and/or a conservator. Although Dr. Dodds believed [Ms. Argoe] to be an "incapacitated person" and in need of a guardian/conservator, she could not definitively determine whether [Ms. Argoe's] condition was temporary or permanent.
>
> On July 20, 2005, [Ms. Argoe] was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her pre-scribed medication. Dr. Dodds's discharge diagnosis was "bipolar disease, manic with psychosis."

Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 465-68, 710 S.E2d 67, 69-70 (2011) (Argoe II) (underlined emphasis in original; internal footnotes omitted). Pursuant to the June 21, 2005, Order from Probate Judge Lawson, Ms. Argoe completed her one-year of out-patient therapy around July/August 2006. Soon after completing her outpatient treatment, Ms. Argoe commenced litigation.

WPE #3

Nurse Burrell, the only nurse at Three Rivers specifically named in Ms. Argoe's lawsuit, had limited contact with Ms. Argoe. After being appointed by the Probate Court as the second designated examiner by order dated June 10, 2005, Nurse Burrell reviewed the then-existing records, conducted interviews, and issued her examination report on June 15, 2005. Nurse Burrell's recommendations were similar to the conclusions of Dr. Phyllis Mobley, the physician designated examiner who issued her report to the Probate Court on June 16, 2005. The reports from the two designated examiners, together with other information, were reviewed by Probate Judge Lawson at a continued commitment hearing that was conducted on June 21, 2005. Nurse Burrell filled out no additional paperwork and had no other contact with Ms. Argoe after the

June 21, 2005 hearing when Probate Judge Lawson ordered Ms. Argoe to continue her in-patient treatment and, upon discharge, complete twelve months of out-patient psychiatric treatment.

The Supreme Court ruled in Argoe II that "[Ms. Argoe] is procedurally barred from challenging the validity of the underlying orders," including and expressly noting the June 21, 2005, continued commitment order. Id. at 470, 710 S.E.2d at 71. Furthermore, "[Ms. Argoe is] precluded from collaterally attacking the underlying commitment orders." Id. At 471, 710 S.E.2d at 72. These findings by the Supreme Court are the established law of this case.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, __, 671 S.E.2d 79, __ (2008) (citations omitted). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." Gauld, at __, 671 S.E.2d at (citations omitted). To withstand a motion for summary judgment the non-moving party must submit evidence of a genuine issue of material fact. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Gauld, at __, 671 S.E.2d at __ (citations omitted). A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the

time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. Guinan v. Tenet Healthsystems of Hilton Head, 383 S.C. 48, 54-55, 677 S.E.2d 32, __ (2009):

DISCUSSION

As noted above, it is an established fact in this case that Ms. Argoe was lawfully involuntarily committed pursuant to South Carolina's emergency commitment statutes. Nurse Burrell was the second, and non-physician, designated examiner appointed by the Probate Court in an order dated June 10, 2005. The first designated examiner appointed by the Probate Court was Dr. Mobley. I find that the record and the deposition of Nurse Burrell reflect that her only involvement with Ms. Argoe was serving as the second appointed designated examiner in the involuntary commitment proceedings. After the final Probate Court Hearing and Order of Continued Treatment by Probate Judge Lawson on June 21, 2005, Nurse Burrell had no additional involvement with the care or treatment of Ms. Argoe.

Based on the rulings already issued by the Supreme Court in Argoe II, Ms. Argoe cannot now attempt to collaterally attack the underlying commitment orders. Since Nurse Burrell was at all times acting under the authority of and during the pendency of the Probate Court proceedings, she is entitled to quasi-judicial immunity. That is, as a matter of law, there is no issue of material fact that would allow Ms. Argoe to overcome the grant of quasi-judicial immunity in favor of Nurse Burrell in this case.

"Court-appointed examiners are essentially an arm of the judiciary," and "quasi-judicial immunity for acts performed within the scope of appointment is necessary to protect the court-appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the guardianship proceedings." Vaughn v. McLeod Regional Medical Center, 372 S.C.

505, 512, 642 S.E.2d 744, 748 (2007). The Vaughn case is directly on point regarding the claims alleged by Ms. Argoe versus Nurse Burrell. In Vaughn, the Supreme Court upheld the grant of quasi-judicial immunity to a physician who was appointed by the Probate Court and made the alleged incorrect diagnosis that Mr. Vaughn was an "incapacitated person." The Supreme Court cautioned that "[i]f court-appointed examiners in guardianship proceedings are not afforded immunity, the exposure to liability will have a chilling effect on future acceptances of such appointments." Vaughn, at 512, 642 S.E.2d at 748. Indeed, this is "precisely why absolute quasi-judicial immunity must be extended to court-appointed examiners in guardianship proceedings." Id. at 513, 642 S.E.2d at 748-749.

In the present action, the probate court, pursuant to the South Carolina Code of Laws regarding involuntary commitment proceedings, appointed Dr. Phyllis Brant-Mobley and Nurse Burrell to act as the mental health examiners for Plaintiff. The designated examiner reports as well as other information were reviewed by Probate Judge Marvin Lawson before he issued the June 21, 2005, Order for Continued Treatment. The Supreme Court has already determined that there was a substantial basis for the continued involuntary, in-patient treatment of Plaintiff.

> Additionally, we disagree with [Ms. Argoe's] assertion that her involuntary commitment was without a factual basis. In support of this assertion [Ms. Argoe] directs this Court's attention to numerous documents, including Dr. Leonhardt's consulting opinion dated June 14, 2005, which was requested by Dr. Bryant–Mobley and reviewed by Dr. Dodds. It was indicated in the opinion that [Ms. Argoe's] condition was the result of "marital conflict" as she was an "alleged victim of abuse." Initially, we would note that Judge Lawson presumably took into consideration Dr. Leonhardt's opinion as the court-appointed examiners presented their findings to Judge Lawson during the June 21, 2005 hearing. Furthermore, the remaining documents offered by [Ms. Argoe] are depositions and affidavits that post-date the involuntary commitment proceedings. These after-the-fact documents cannot operate to retroactively invalidate the commitment orders that were procedurally proper and factually substantiated by court-appointed medical personnel. To find otherwise, we would undermine the probate court's authority in involuntary commitment proceedings.

Argoe II at 471, 710 S.E.2d at 72-73. The Supreme Court more succinctly reached the same conclusion when addressing Ms. Argoe's prior claim for defamation. "We find that summary judgment was properly granted to [Psychiatric Solutions, the successor owner of Three Rivers] as any communications issued by Three Rivers' employees were qualifiedly privileged as they were done in effectuating the lawful orders of the probate court." Argoe II, 392 S.C. at 474, 710 S.E.2d at 74. Stated another way, "Three Rivers [and its employees were] entitled to quasi-judicial immunity as it was treating [Ms. Argoe] pursuant to the involuntary commitment order." Id. at 475, 710 S.E.2d at 74.

Ms. Argoe asserts that there is a genuine issue of fact created by the deposition of Nurse Burrell concerning her participation as a designated examiner. It is claimed that Nurse Burrell admitted in her deposition that she did nothing to fulfil the duties of designated examiner, but yielded entirely to the opinions of the doctor. Therefore, it is argued that the nurse is not entitled to qualified judicial immunity (or at least there is a genuine issue of fact) because she completely failed to carry out the duties of the position she occupied. While the court is troubled by this question, there does not appear to be a means of reconciling this assertion with the established law of this case.

CONCLUSION

At all relevant times, Nurse Burrell was working within the bounds of the involuntary commitment order issued by the Probate Court. She was specifically appointed as the second, non-physician designated examiner by the Probate Court. Nurse Burrell's involvement with the care and treatment of Ms. Argoe ended when Probate Judge Lawson issued his order on June 21, 2005, for the continued in-patient treatment of Ms. Argoe followed by twelve months of out-patient treatment. Based on the Supreme Court's previous findings that "quasi-judicial immunity

for acts performed within the scope of appointment is necessary to protect the court-appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the guardianship proceedings," I FIND and ORDER that Nurse Burrell shall be dismissed from this action and GRANT her motion for summary judgment.

William P. Keesley
Judge

Lexington, South Carolina
March 19, 2014

#8

Law Offices of
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July 1, 2014

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Lexington, South Carolina 29072

Re: Martha Lewin Argoe, Appellant v. Three Rivers Behavioral Health, LLC, et al, Respondent
Civil Action No.: 2007-CP-32-1981

Dear Ms. Carrigg:

Enclosed for filing is a Notice of Appeal in the above case.

Sincerely yours,

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
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Attorney for Appellant

Enclosures

cc: Will Davidson, Esquire
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