THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YOUR 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.

INITIAL RESPONDENTS' BRIEF

Thomas C. Salane
R. Hawthorne Barrett
Turner Padget Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200

Attorneys for the Respondents Dr. Gregory A. Miller and Rock Hill Gynecological & Obstetrical Associates, P.A.

William U. Gunn
Joshua T. Thompson
Holcombe Bomar, P.A.
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300

Attorneys for Respondent Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center

TABLE OF CONTENTS

TABLE OF AUTHORITIES

(A) Cases

(B) Statute

(C) Rules

(D) Other Authorities

STATEMENT OF THE ISSUES ON APPEAL

I. Did the trial court properly grant partial summary judgment on any claims by the minor plaintiff for her pre-majority medical expenses and related necessaries, where that decision complies with longstanding South Carolina precedent that is directly on point?

II. Did the trial court properly decline to apply the doctrines of implied waiver and equitable assignment in this case, where South Carolina law does not recognize those doctrines in this context?

III. Did the trial court properly deny the Appellant's request for leave to amend her Complaint, where the proposed amendment would have added a new party plaintiff to the case and the request was made after the expiration of the statute of limitations?

IV. Did the trial court properly find the Respondents did not waive their defenses to the claims for medical bills and related necessaries asserted by the minor plaintiff, where the Appellant raised that issue for the first time in her Rule 59(e) motion?

STATEMENT OF THE CASE

In this appeal, the Appellant asks this Court to abrogate a longstanding principle of South Carolina's common law. This is a medical malpractice case in which the minor plaintiff claims the doctor and nurses who participated in her delivery breached the applicable standards of care. The Appellant challenges a decision by the trial court to grant partial summary judgment in favor of all Respondents. The trial court based its decision on the common law rule the Appellant now seeks to change.

On November 25, 2009, Alexia L. ("Minor"), through her "Next Friend" Angela Patton,[1] filed a Summons and Complaint against Dr. Gregory A. Miller and his medical

[1] Patton is Minor's mother.

practice, Rock Hill Gynecological & Obstetrical Associates, P.A. ("RHGO"). [Complaint.] The pleadings did not list Angela Patton as a party in her own right, nor did they purport to allege or assert any claims on her behalf. [Complaint.] All causes of action were alleged, and all relief was sought, in Minor's name only. [Complaint.] Dr. Miller and RHGO filed and served a timely Answer that denied the plaintiff's entitlement to any relief.

In April 2012, Minor, again through her "Next Friend" Angela Patton, filed a substantially similar Summons and Complaint against the Respondent Amisub of South Carolina d/b/a Piedmont Medical Center.[2] [Complaint #2.] Amisub filed and served a timely Answer which, like the other defendants' responsive pleading, denied the plaintiff's ability to obtain any of the relief requested in the Complaint. [Answer.] All of the parties then agreed to consolidate the two cases under the docket number of the first action, and the trial court filed an order to that effect on July 12, 2012.

Amisub filed a Motion for Partial Summary Judgment on April 29, 2013. [Amisub Motion.] In that motion, Amisub argued that Minor was not entitled to claim any damages for her pre-majority medical expenses, as that right belonged to her parents. [Memorandum in Support.] Amisub further argued that the applicable statutes of repose and limitations had expired, thereby barring any future claim by Patton for those medical expenses. [Memorandum in Support.] Several weeks later, Dr. Miller and RHGO also filed a Motion for Partial Summary Judgment based on the same grounds. [Miller/RHGO Motion.]

---

[2] Respondent Amisub of South Carolina d/b/a Piedmont Medical Center is properly identified as Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center.

Both motions came before the Honorable S. Jackson Kimball on July 18, 2013. After hearing oral arguments and considering written submissions by the parties, Judge Kimball filed an Order granting partial summary judgment to all Respondents on August 2, 2013. [Order.] In the Order, Judge Kimball ruled that Patton in her capacity as "Next Friend" of Minor was not a party to the case and could not assert any claims on her own behalf. [Order.] This left Minor as the only real plaintiff, and because she was a minor, she could not seek to recover any pre-majority medical expenses or related necessaries under established South Carolina law. [Order.] Therefore, Judge Kimball granted summary judgment in the Respondents' favor as to any and all claims for pre-majority medical expenses and related necessaries. [Order.] Judge Kimball then declined to make any ruling on the statute of repose/statute of limitations issues because Patton was not a party to the action. [Order.]

On August 16, 2013, the Appellant filed a Rule 59(e) Motion to Alter or Amend, which was combined with a Motion for Leave to Amend the Complaint. [Rule 59(e) Motion.] The Respondents submitted briefs in opposition to those motions, and Judge Kimball conducted a second hearing on October 17, 2013. At that hearing, the Appellant's attorney withdrew her request to amend the Complaint as to Amisub. [Transcript.] On November 4, 2013, Judge Kimball filed an Order that denied both of the Appellant's motions and left his original decision intact. [Order.] The Appellant then commenced this appeal.

STATEMENT OF THE FACTS

The Respondents do not believe a factual statement is necessary for the issues on appeal. However, the absence of a factual statement in this brief should not be construed as agreement with the Appellant's Statement of the Facts.

STANDARD OF REVIEW

When an appellate court reviews a decision to grant summary judgment, it applies the same standards that governed the trial court under Rule 56, SCRCP. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 109, 584 S.E.2d 375, 377 (2003). Under Rule 56, summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and the conclusions and inferences to be drawn from the facts are undisputed. *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990).

When a court rules on a motion for summary judgment, it must view the evidence, and the inferences reasonably to be drawn from that evidence, in the light most favorable to the nonmoving party. *Id.* However, a party bearing the burden of proof on a particular claim must factually support each element of that claim, and a "complete failure of proof concerning an essential element [of that claim] necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

On those issues where the nonmoving party will have the burden of proof, it is that party's obligation to confront the motion for summary judgment with specific facts demonstrating all elements of the claim. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). The plain language of Rule 56(c), SCRCP, 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 that party's case. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991). In such a situation, the moving party is entitled to judgment as a matter of law because the nonmoving party has failed to demonstrate a genuine issue of material fact as to a necessary part of that party's claim. *Id.*

ARGUMENT

I. The trial court properly followed controlling precedent in granting partial summary judgment on the issue of the minor plaintiff's claims for medical expenses and related necessaries.

It is the well-established law of South Carolina that any right to recover a minor's medical expenses in a legal action belongs not to the minor, but rather to the minor's parents. *Tucker v. Buffalo Cotton Mills*, 76 S.C. 539, 57 S.E. 626 (1907). South Carolina's courts have consistently reiterated and applied this rule since *Tucker* was decided. *See, e.g., Hughey v. Ausborn*, 249 S.C. 470, 475, 154 S.E.2d 839, 841 (1967) ("[T]he amount paid for medical care and treatment by the parent is not an element of damage [for the minor] 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. v. Evans*, 317 S.C. 346, 352, 454 S.E.2d 343, 346 (Ct. App. 1995) ("Under the common law, a parent is responsible for the support of his or her minor child.").

In the present case, it is undisputed that Minor is asserting a claim for the expenses incurred as a result of, and related to, her pre-majority medical care. Although Minor's mother (Angela Patton) appears in the case caption, she is listed only as Minor's "Next Friend." According to the Supreme Court of the United States, "[t]he 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). Similarly, the term "next friend" has been defined as 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 a guardian." *Black's Law Dictionary* (9th ed. 2009) (emphasis added). Thus, under the law, Angela Patton is not a party and cannot be asserting any claims of her own in this case.

In addition, Patton has admitted she has not asserted any claims in her own right. Patton has conceded, both in the circuit court and in the Appellant's Brief, that she is only acting in a representative capacity for Minor, who is the one actually seeking to recover the medical expenses and related necessaries. As a result, this Court need not determine what the phrase "next friend" means. Patton[3] has essentially agreed that the term's definition for purposes of this case is consistent with those definitions quoted above.

Patton also does not challenge or dispute the current state of the law in South Carolina regarding a minor's ability to recover pre-majority medical expenses. She admits that *Tucker* and its progeny remain the law of this State. Indeed, the central theme of her appeal is an attempt to change that law. Therefore, the only real question on this issue is whether Patton has provided a compelling reason to change a rule that has been part of South Carolina's common law for more than a century. As discussed below, the answer to that single and dispositive question is no.

---

[3] Although Patton is not an actual party, the Respondents will use the name "Patton" in this brief in place of the more generic "Appellant." This usage will prevent any confusion that might arise from using the names "Patton," "Minor" and "Appellant" at different times. However, the use of "Patton" should not be construed as any admission or agreement that Patton is actually a party. As discussed above, she clearly is not.

At the outset, it is important to note the binding effect of *Tucker* and its progeny upon this Court. As the Court has acknowledged, "the decisions of the Supreme Court bind this Court as precedents." *Daniels v. City of Goose Creek*, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (Ct. App. 1993) (citing S.C. Const. Art. V, §9). *See also Bain v. Self Mem. Hosp.*, 281 S.C. 138, 314 S.E.2d 603 (Ct. App. 1984) (Court of Appeals lacks authority to change the law when it has been clearly stated by the Supreme Court). Here, the law set forth by the Supreme Court in *Tucker* and *Hughey* is clear, and only the Supreme Court should address or consider arguments to change that law.

As the Supreme Court has noted, "[i]t is within [the Supreme] Court's purview to change the common law." *Marcum v. Bowden*, 372 S.C. 452, 458, 643 S.E.2d 85, 88 (2007).[4] For this reason, changes to South Carolina's common law usually come from the Supreme Court. *See, e.g., Russo v. Sutton*, 310 S.C. 200, 422 S.E.2d 750 (1992) (abolishing the tort of alienation of affections); *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991) (adopting the doctrine of comparative negligence).

The Supreme Court's decision in *Nelson* provides a telling example of the interplay between this State's two appellate courts when changes to the common law are at issue. This Court originally purported to adopt the doctrine of comparative negligence (in place of the harsher contributory negligence defense) in *Langley v. Boyter*, 284 S.C. 162, 325 S.E.2d 550 (Ct. App. 1984). Writing for the Court, Judge Sanders gave an extensive review of the modern trend towards comparative negligence and concluded that the doctrine would now be the law of South Carolina. A year later, however, the Supreme Court reversed that decision in *Langley v. Boyter*, 286 S.C. 85, 332 S.E.2d 100

---

[4] The General Assembly can also change the common law through statutory enactments, but no such statutes are involved in this case.

(1985). As a result, contributory negligence remained in place. It was not until the Supreme Court officially adopted comparative negligence in *Nelson*, some five years later, that the doctrine became a part of our common law. Significantly, the Supreme Court cited with approval Judge Sanders' analysis from *Langley* in stating the reasons for changing the common law. This demonstrates that the problem with this Court's decision in *Langley* was not the analysis itself. Rather, the problem lay only in the scope of authority in dealing with proposed changes to the common law.

Here, Patton is candid about her desire to change the common law rule that was stated in *Tucker* and has been reaffirmed several times since then. Patton implicitly acknowledges that the circuit court's decision is correct under the current law, and she asks this Court to change that law so that the result will also change. But considering such a request is in the purview of the Supreme Court, and this Court should decline Patton's invitation to abrogate a plainly stated, longstanding common law rule. Unless and until the Supreme Court changes it, that rule should remain the law of South Carolina.

Regardless of this threshold issue, Patton still has not demonstrated any need or basis for changing the common law rule recognized in the *Tucker* line of cases. Contrary to Patton's assertions, the underlying rationale for the current rule still exists. Parents remain responsible for providing medical care to their minor children and for paying the expenses related to such care. This is still an expense that the parents incur, not the minors themselves. Although much has obviously changed in the century since *Tucker*, and even in the years since *Hughey*, this one basic fact remains the same. Medical

providers still send bills to parents, not minor children, and parents must pay those bills. For purposes of the current rule's validity, this is all that matters.

Patton attempts to argue that the law has changed with regard to a parent's responsibility for a minor child's medical expenses, but her position rests upon a misreading of a single case. In *Greenville Hosp. Sys. v. Smith*, the Supreme Court addressed the issue of "the liability of a minor's estate for emergency hospital services when the minor is living with and being supported by his parents." 269 S.C. 653, 654, 239 S.E.2d 657, 658 (1977). The Court held that "the minor is not liable unless the parents are unable to pay the reasonable value of the hospital services rendered ...." *Id.* Because the record did not demonstrate whether the minor's parents were unable, or just unwilling, to pay the hospital bills, the Court remanded for a determination of that issue. The Court concluded that unless there was a showing of an inability to pay (as opposed to other reasons for not paying), the judgment of the lower court awarding the hospital a recovery against the minor's estate would be reversed. *Id.* at 657, 239 S.E.2d at 658.

In reaching its decision, the Court relied upon a longstanding rule that permitted a recovery against a minor for medical expenses when the evidence showed the parents were unable to pay. The Court did not suddenly make all minors responsible or liable for their own medical bills. Indeed, the Court reiterated that minors are not responsible for those expenses except in one very limited scenario (*i.e.* the parents' inability to pay). Thus, the Court in *Greenville Hosp.* did not change anything about the common law, and it certainly did not do anything to alter the rule stated in *Tucker*.

In fact, the Court actually reaffirmed the *Tucker* rule in its *Greenville Hosp.* opinion. Although the Court did not cite or discuss that rule directly,[5] it made an implicit reference to the rule in describing the background facts. The Court noted that the minor's parents "ha[d] not pursued their right of action to seek recovery of the expenses they incurred for [the minor's] medical and hospital treatment." 269 S.C. at 658-59, 239 S.E.2d at 655-56 (emphasis added). This language demonstrates that the Court believed the legal right to seek recovery of the minor's medical expenses belonged to the parents, not the minor. In other words, the Court followed the common law rule stated in *Tucker*.

As this discussion demonstrates, *Greenville Hosp.* did not signal any departure from the established common law. Patton apparently believes that case created a new rule that suddenly made minors liable for their medical expenses as of 1977. But the Court in *Greenville Hosp.* merely applied a rule that had been in existence since at least 1854 – more than fifty years before the Court issued its opinion in *Tucker*. Consequently, *Greenville Hosp.* was not a new development in the law, and it does not provide any justification for changing the common law rule that parents have the right of action to recover the medical expenses of their minor children.

Although Patton cites several other cases to support her argument for changing the law, none of those authorities are binding on this Court. Thus, those cases are irrelevant for present purposes. This is not a situation in which South Carolina's courts have never dealt with the issue and must therefore look to other jurisdictions for guidance. Rather, South Carolina has an established common law rule that our courts have cited and applied for more than a century. The South Carolina Supreme Court has

[5] The absence of any such citation or discussion is, in itself, evidence that the Court did not intend its decision in *Greenville Hosp.* to change the common law as stated in *Tucker*.

never even hinted at changing this rule, even though many of the decisions from other states cited by Patton have been in place for twenty-five years or more. Thus, the out-of-state cases upon which Patton relies are not relevant, and the Court need not consider them.

Patton also cites a decision by a South Carolina federal district court judge, but that case fails to support her argument for changing the law. In *McNeill v. United States*, 519 F. Supp. 283 (D.S.C. 1981), the federal judge allowed a minor to recover medical expenses when his parents had not filed an action seeking those damages. However, there are three important facts to consider when evaluating *McNeill* for purposes of this appeal.

First, that case has no greater impact than any of the other cited authorities from foreign jurisdictions, as decisions of the United States District Court for South Carolina are not binding on South Carolina's appellate courts. *See Blyth v. Marcus*, 375 S.C. 363, 517 S.E.2d 433 (1999). Second, the federal judge in *McNeill* did not cite or rely upon any South Carolina authorities to support his conclusion, which indicates the judge's decision did not represent South Carolina law. Third, *McNeill* was decided more than thirty years ago, and our Supreme Court has never cited it for the proposition that a minor can recover his or her own pre-majority medical expenses. All of these points indicate that *McNeill* is a non-binding anomaly that is not in accord with South Carolina's established common law rule.

Again, it is telling that despite the fact that many of Patton's cited authorities have existed for decades, our Supreme Court has never seen fit to change the common law on this issue. Nor can Patton argue that the Court simply has not had the opportunity to do

so. Although the Court has not published a decision on this issue in many years, it recently denied a petition for a writ of certiorari in a case that involved the exact same argument to change the common law rule.[6] That denial kept in place a decision by this Court that followed and applied the established rule.[7] Thus, it is clear that the Supreme Court has had the chance to address arguments against the current common law; the Court has simply chosen not to do it. This lack of action by the Court is significant.

In addition, Patton's arguments for changing the common law are unconvincing. Patton calls the rule a "creditor's remedy" that imposes an undue hardship on injured minors and their parents. Yet, Patton's position commits the fallacy of assuming every situation is a "worst case scenario," when in reality, most cases involve no hardships at all. Barring some extraordinary circumstances not present in this case, it is neither unfair nor unduly burdensome to hold plaintiffs accountable for following (or, as in this case, not following) the common law rule. This is especially true when one considers the rule is both well-established and easy to satisfy.

For example, in the present case Patton has offered no explanation for why she failed to assert a claim for her daughter's pre-majority medical expenses and related necessaries.[8] Nor has she claimed there was any reason she could not have brought such an action. In other words, Patton has argued it is unfair that she should be required to pursue that remedy herself, but she has not demonstrated why it was unfair under the

---

[6] *Cue-McNeil v. Watt*, 2012 S.C. LEXIS 6 (S.C., Feb. 8, 2012)

[7] *Cue-McNeil v. Watt*, 2010 S.C. App. Lexis 596 (Ct. App. 2010)

[8] To the extent it can be considered an explanation for her failure to bring a claim for pre-majority medical expenses or necessaries in her own name, Patton confusingly asserts that it was "a mistake concerning the identity of the proper party." [App. Brief, pp. 26-27.]

circumstances of this case. Lost in all of Patton's arguments about fairness and an "archaic" rule is the fact that she has presented no reasons whatsoever to explain why she could not have followed that rule.

As previously discussed, the *Tucker* rule has been part of South Carolina's common law for more than a century. Our courts have consistently applied the rule in published decisions. Thus, the rule is neither a lost relic of history nor some hidden trap for the unwary. The rule is established law, and Patton is charged with knowledge of it. *See Ahrens v. State*, 392 S.C. 340, 355, 709 S.E.2d 54, 61 (2011) ("citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests"). Accordingly, it was incumbent upon her to file and pursue an action to recover her daughter's pre-majority medical expenses within the governing statutes of repose and/or limitations. For whatever reason, Patton simply did not take advantage of her full opportunity to comply with the law and protect her financial interests. This failure has resulted in negative consequences for Patton, but that fact does not make the rule itself "unfair."

In granting partial summary judgment, the trial court did not allow itself to be distracted by history lessons or general and inapplicable arguments about fairness. The trial court followed the well-established common law, which permitted no other result. Significantly, Patton has not argued that the trial court's decision was erroneous under the current law; she merely claims the law should be different because some other jurisdictions have different rules. Again, though, the trial court properly applied the law as it actually exists, and Patton has failed to demonstrate otherwise. Therefore, this Court should affirm the result below pursuant to the *Tucker* line of cases.

II. The trial court properly ruled that Minor may not rely upon the doctrines of implied waiver and equitable assignment to assert her parents' claim for her pre-majority medical expenses and related necessaries.

Patton concedes the settled law of this State holds that parents have the sole right to recover medical expenses incurred by their minor children. She, therefore, vaguely argues that Minor is entitled to seek recovery of her pre-majority medical expenses and related necessaries because Patton impliedly waived[9] or equitably assigned[10] her right to seek those expenses in favor of Minor. The trial court, however, properly concluded that both doctrines are inapplicable and may not be used to salvage Patton's claims for pre-majority expenses related to Minor's care and treatment.

a. The doctrine of implied waiver is strictly an affirmative defense which Patton may not invoke offensively to salvage a claim belonging to a non-party.

Under South Carolina law, an implied waiver arises "from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." *Lyles v. BMI, Inc.*, 292 S.C. 153, 158-59, 355 S.E.2d 282, 285 (Ct. App. 1987), *citing Pitts v. New York Life Insurance Company*, 247 S.C. 545, 148 S.E.2d 369 (1966) (emphasis added). Because implied waiver hinges on the acts and conduct of the party against whom it is invoked, the doctrine may not be used

---

[9] Patton initially refers to the doctrine of implied waiver as "waiver and estoppel" but briefs the doctrine as "implied waiver." The Respondents, therefore, brief the doctrine as "implied waiver." To the extent Patton intends to argue some theory of estoppel, she has waived that argument by presenting it as a conclusory statement with no supporting authority. *See Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285, n. 3 (Ct. App. 1993) ("[A]n issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority.").

[10] The Respondents will refer to equitable assignment and implied assignment simply as the doctrine of equitable assignment.

offensively. *See Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992).

In *Janasik*, the plaintiff property owners brought an action against their property regime after it demanded that the plaintiffs bring their landscaping into compliance with the regime's restrictive covenants. *Id.* at 341 – 42, 415 S.E.2d at 386. As part of their action, the plaintiffs offensively asserted the doctrine of waiver. *Id.* The South Carolina Supreme Court modified the trial court's ruling to the extent it found in favor of the plaintiffs on their affirmative assertion of waiver. *Id.* at 345, 415 S.E.2d at 388. The Court made it clear that the doctrine of waiver only may be invoked as a shield, holding that while waiver "may be invoked as [an] affirmative defense[] to counterclaims," it "may not be asserted in a complaint as [an] offensive weapon[]." *Id.* Simply put, the Court concluded waiver may not be used as an "instrument[] of gain or profit." *Id.*

Though South Carolina recognizes the doctrine of implied waiver, no South Carolina appellate court has ever invoked that doctrine to find that a named plaintiff holds a cause of action which properly belongs to a non-party. The trial court correctly ruled that "nothing in the record, directly or by inference, supports any claim of an implied waiver ... of the claim to the minor Plaintiff." [August 2, 2013 Order, p. 2.] Patton cites to the mere fact that she brought the action in Minor's name as evidence of an intentional relinquishment of a known right. Patton, however, fails to address the fact that there is absolutely no hint in her Complaints that she intentionally waived her exclusive right to seek the pre-majority expenses. In fact, Patton's Motion for Leave to Amend the Complaint to assert a claim for pre-majority medical expenses in her own name evidences that she did not intentionally and unequivocally relinquish her right to

seek those expenses. Had she relinquished that right, she certainly could not try to assert it in an amended pleading; the right would no longer be hers to pursue in that scenario.

More importantly, contrary to the established law of this State, Patton attempts to invoke the affirmative defense of implied waiver as an offensive weapon for gain. As discussed above, South Carolina law bases the doctrine of implied waiver exclusively upon the acts and conduct of the party against whom the doctrine is invoked. Because the doctrine of waiver hinges upon the conduct of a party asserting an action or claim, the well-established law of this State recognizes that waiver only may be invoked as an affirmative defense.

Patton's attempt to invoke the doctrine of implied waiver, therefore, is misguided. She does not claim waiver based upon the conduct of the Respondents. She does not even attempt to use the doctrine against a party to this action. Rather, she claims a non-party waived the non-party's right to pursue an action through the actions and conduct of the non-party. South Carolina law has never applied the doctrine of implied waiver to that kind of situation.

Patton's implied waiver argument improperly attempts to assert a defensive shield as a sword. She does not simply ask this Court to apply an existing doctrine in a new manner; rather, she argues for this Court to change the doctrine altogether. For that reason, the trial court properly ruled that well-established South Carolina law does not entitle Patton to invoke the doctrine of implied waiver to salvage the claim of a non-party in favor of a party-plaintiff.

b. The doctrine of equitable assignment does not save Patton's claim for pre-majority expenses and related necessaries because Patton fails to set forth the elements necessary for application of that doctrine.

To establish an equitable assignment under South Carolina law, a party must show (1) "words or transactions which show an intention on the one side to assign," (2) words or transactions which show "an intention on the other [side] to receive," and (3) "valuable consideration" for the assignment. *Player v. Player*, 240 S.C. 274, 278, 125 S.E.2d 636, 638 (1962). In the absence of an express agreement, a party attempting to argue equitable assignment must plead facts sufficient to demonstrate the existence of an equitable assignment. *Georgia-Carolina Gravel Co. v. Blassingame*, 129 S.C. 18, 123 S.E. 324, 326 (1924).

Considering this common law, Patton fails to put forth a plausible argument in favor of applying the doctrine of equitable assignment to the facts of her case. Primarily, Patton does not argue that Minor paid consideration for the purported assignment of Patton's claim for pre-majority medical expenses. The following colloquy from the trial court demonstrates this point:

> THE COURT: Doesn't an assignment requiring [sic] some consideration[?]
>
> MR. GRAHAM:[11] Not under *C.J.S.* and *Am. Jur.* in this situation.

[Transcript, p. 21.] Patton does not argue that she satisfies the elements for establishing an equitable assignment in this State. Instead, she attempts to deflect attention from her inability to establish an equitable assignment under South Carolina law by citing to contradictory, non-binding secondary sources.

---

[11] Mr. Graham represented Appellant at the July 18, 2013 hearing.

Even if Patton could establish that Minor provided consideration to her mother for assignment of the claim for pre-majority expenses, her argument still would fail. As set forth in the trial court's August 2, 2013 Order and in Section II(a) above, the record is devoid of any evidence of words or transaction which show Patton's intent to assign her claim for pre-majority expenses to Minor or which show Minor's intent to accept an assignment.

Likewise, Patton freely admits that there is no express agreement supporting the alleged equitable assignment:

> THE JUDGE: And nobody contends [the implied waiver or equitable assignment] was done expressly, right?
>
> MR. RUFFIN:[12] Nobody contends it was done expressly. It was either done impliedly or not at all. There was no written document evidencing a transfer.

[Transcript, p. 10.] Absent evidence of an express agreement, Patton was required to plead facts sufficient to evidence an equitable assignment. As with all other evidence in the record on appeal, Patton's Complaints against the Respondents do not in any way set forth facts supporting the existence of an equitable assignment.

Patton admits she cannot show the elements required to establish an equitable assignment. Even if she could demonstrate the necessary elements of the doctrine, Patton has failed to set forth evidence of an express agreement or to plead facts sufficient to demonstrate the existence of an equitable assignment. Thus, the trial court properly ruled that South Carolina law does not recognize a claim of equitable assignment on the facts of this case.

---

[12] Mr. Ruffin represented Appellant at the October 17, 2013 hearing.

c. Patton cites outlying South Carolina federal district courts cases which do not discuss, interpret or apply South Carolina law.

Patton inaccurately asserts that South Carolina federal district courts "interpreting South Carolina law" have recognized the doctrines of implied waiver or equitable assignment as mechanisms by which a non-party may waive her right to bring a cause of action in favor of a party. [Brief p. 19 – 20, fn. 12.] Patton cites *McNeill*, *supra*, and *Sox v. United States*, 187 F. Supp. 465 (E.D.S.C. 1960), in support of her assertion.

In *Sox*, a South Carolina federal district court noted, in dicta, that a minor's parents waived their claim to recover for the minor's medical expenses by failing to assert a claim for medical expenses within the parents' two year statute of limitations. 187 F. Supp. at 469. The *Sox* Court, however, did not cite to any legal authority – South Carolina or otherwise – in support of its ruling. *Id.* at 469 – 470.

The South Carolina federal district court in *McNeill*, likewise, relied upon no South Carolina law in determining that a minor's parents had waived their right to seek pre-majority expenses incurred for the minor's medical treatments. 519 F. Supp. at 290. Instead, the district court cited to only one legal opinion in support of its ruling: the previous federal court decision in *Sox*. *Id.*

The Respondents incorporate their arguments against reliance on *McNeill* – and *Sox* – set forth above in Section I of this brief. Decisions of the United States District Court for South Carolina are not binding on South Carolina's appellate courts. Also, directly contrary to Patton's assertion in her brief, neither *McNeill* nor *Sox* interpreted, cited to, or otherwise referenced South Carolina law in noting that a parent may waive a claim for pre-majority medical expenses in favor of a minor child. Third, *Sox* and *McNeill* were released 54 years ago and 33 years ago, respectively. Yet, not one

decisional court of this State has ever cited to *Sox* or *McNeill* for the proposition that a minor can recover his or her own pre-majority medical expenses or related necessaries.

Finally, Patton argues that the reasoning employed in *Sox* and *McNeill* reflects the ultimate policy consideration at issue: prevention of double recovery of medical expenses. Patton asserts that so long as a parent's claim is waived in favor of, or assigned to, the minor, then there is no double recovery and all policy goals are met. The Respondents, however, submit that the *Tucker* line of cases upholds a foundational principle of tort law: "The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained." *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). Only parents are responsible for payment of a minor's medical expenses, barring extraordinary circumstances not present in this case. Because Minor is not responsible for her own pre-majority medical expenses and necessaries, she has not suffered any loss for which she is entitled to recover.

Contrary to Patton's argument, *Sox* and *McNeill* do not interpret the law of South Carolina (or any other jurisdiction). In fact, those non-binding opinions directly contradict South Carolina's established common law rule that parents hold the exclusive right to recover for their minor child's pre-majority medical expenses. Therefore, the Court should decline to apply those cases here.

d. Patton's claim for pre-majority medical expenses was time-barred and invalid by the time that she purportedly transferred the claim to Minor.

Even if Patton established the necessary elements of implied waiver or equitable estoppel and South Carolina law recognized those doctrines as allowing a minor to pursue a claim for pre-majority expenses which her parents abandoned, Patton's "transferred" claim for the recovery of her pre-majority expenses would still be invalid as

to Amisub. A plaintiff must commence an action for medical negligence within three years from the date of the alleged negligent treatment. S.C. Code Ann. § 15-3-545(A). Thus, Patton's right to seek recovery for Minor's pre-majority medical expenses expired no later than the spring of 2010, three years from the date of delivery.

Patton admits that any alleged waiver or assignment of her claim for pre-majority expenses did not occur until she instituted her actions as Next Friend against the Respondents. [Brief p. 18 – 19.] Patton also admits that by waiting until September 23, 2011, to commence her action against Amisub, "suit was filed in this matter outside the three-year statute of limitations on Amisub ...." [Transcript, p. 26.]

As a purported transferee of her parents' exclusive right to recover pre-majority medical expenses, Minor's claim would be subject to all defenses available to Amisub against her parents. *See, e.g.*, *Rosemond v. Campbell*, 288 S.C. 516, 522 - 23, 343 S.E.2d 641, 645 (Ct. App. 1986) ("[A]n assignee's rights can be no greater than those of his assignor. Consequently, the assignee of debt takes the obligation subject to all claims and defenses that the obligor may have against the assignor."). By the time of the purported transfer of the right to seek pre-majority medical expenses, the parents' claim for pre-majority expenses and related necessaries against Amisub was time-barred. Minor, thus, would have received nothing more than an invalid and procedurally-barred cause of action.

III. The trial court properly denied the motion to amend because the proposed amendment would have added a new party plaintiff and the request was made after the expiration of the statute of limitations.

After the trial court granted partial summary judgment to the Respondents, Patton filed both a Rule 59(e) motion and a motion to amend the Complaint. The motion to

amend sought to add Patton as a plaintiff so that she could assert a claim for Minor's pre-majority medical expenses. Patton argued that such an amendment would relate back to the date of the original Complaint against Dr. Miller and RHGO, thereby avoiding any problems posed by the statute of limitations.[13] The trial court denied the motion to amend, based primarily on a finding that Rule 15, SCRCP, could not be used to add a new plaintiff to the case. In reaching that decision, the trial court properly applied the governing law, and this Court should affirm.

As a threshold matter, Patton cannot assert any arguments on this issue against Amisub because she abandoned her attempts to amend the Complaint against Amisub in the trial court. The following exchange occurred during the hearing on the Rule 59(e) motion and the motion to amend:

> MR. RUFFIN: That's our argument against the defendant obstetrician OB practice, suit was filed in this matter outside the three-year statute of limitations on Amisub so that is applicable to one party and not the other.
>
> THE JUDGE: So what you are saying is as to Amisub even if the motion were granted, it would be an exercise in futility because the statute would run when they brought the lawsuit. It would only relate back to 2012?
>
> MR. RUFFIN: To Amisub, yes, that's my position with that case.

[Transcript, p. 26.] Based on that answer, the judge noted in his Order: "At the hearing on the motion, Plaintiff withdrew the motion as it pertained to Defendant Amisub ...."

---

[13] Patton has conceded that without the "relation back" provision of Rule 15(c), SCRCP, the claim to be asserted in the proposed amendment would be time-barred.

[Order, p. 3.] Patton has not challenged, or even mentioned, that ruling in her Appellant's Brief, which means she has abandoned it on appeal. *See Fields, supra.*[14]

Regardless of whether or not Patton abandoned any arguments on this issue, the trial court's decision was correct on the merits and should be affirmed. Patton sought to amend the Complaint, in which her daughter was the only actual plaintiff, to add a claim asserted on her own behalf for the daughter's pre-majority medical expenses. As discussed above in Section I, Patton was not a plaintiff in either of the original Complaints. Thus, the proposed amendment was necessarily an attempt to add a new plaintiff to the case, and Rule 15, SCRCP, does not allow such an amendment.

This Court squarely addressed the concept of adding new plaintiffs via Rule 15, SCRCP, in *Valentine v. Davis*, 319 S.C. 169, 460 S.E.2d 218 (Ct. App. 1995). *Valentine* involved two lawsuits filed by different plaintiffs against the same defendant for substantially similar damages. The first lawsuit was filed in federal court, and the second was filed in state court. After a federal judge dismissed a RICO claim (thus eliminating the basis for federal jurisdiction), the plaintiffs in the state court action sought to amend their Complaint to include the former federal plaintiffs ("the Valentines") as parties. The circuit court denied the motion to amend, and the Valentines appealed.

This Court affirmed the denial of the motion, explaining:

> Rule 15, SCRCP, does not allow an existing plaintiff to add a new plaintiff to the case to assert a claim against the defendant. Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing

[14] The failure to address that ruling in the Appellant's Brief also triggers the two issue rule. *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

> defendant. Rule 15(b) addresses amendments to conform to the evidence presented at trial. Rule 15(c) deals with relation back of amendments. None of these subsections addresses a motion to add a plaintiff as contemplated in this case.

Id. at 172, 460 S.E.2d at 219 (emphasis added). For that reason, the Court found the circuit court had not erred in refusing to allow the state court plaintiffs to bring the Valentines into the case as additional plaintiffs. *Id.*

In the present case, Patton attempted to do exactly what this Court rejected in *Valentine*. As previously discussed, Patton is not a party to this case. She is only the "Next Friend" for Minor, which means she is operating in a representative capacity. Patton did not assert any personal claims or causes of action in either of the Complaints, nor could she. Her name appeared in the caption as the person who was asserting claims on behalf of the minor, who was the sole actual plaintiff. Thus, by seeking to include a personal claim by Patton, the proposed amendment was necessarily an attempt to add a new plaintiff to the case. *Valentine* forbids this.

Patton attempts to escape from the principle stated in *Valentine* by claiming the amendment would only change her "capacity" and would not add her as a plaintiff. What Patton fails to acknowledge is that in the present case, those two phrases mean the same thing. Currently, Patton is not a plaintiff and has asserted no claims against the Respondents. Under the proposed amendment, Patton would become a named plaintiff and would be asserting a claim against the Respondents. Regardless of the semantics used, this change would amount to adding a new plaintiff to the case. And as this Court recognized in *Valentine*, Rule 15 simply does not allow for such additions.

Significantly, Patton has not presented any South Carolina authority for the proposition that Rule 15 permits amendments that add new plaintiffs. Although Patton cites *Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377 (1995), that case does not support Patton's position. The plaintiff in *Thomas*, a resident of Michigan, was the widow of a man who died shortly after receiving medical treatments in South Carolina. The plaintiff obtained an appointment as the personal representative of the husband's estate from a probate court in Michigan. After doing so, she commenced a wrongful death action against the medical care providers in South Carolina. Her original Complaint did not allege that she was duly authorized as the personal representative of the estate in South Carolina. Eventually, but not until after the statute of limitations expired, the plaintiff discovered this deficiency, obtained an appointment as the personal representative from a South Carolina probate court, and moved to amend the Complaint. The proposed amendment demonstrated that the plaintiff was now the duly authorized personal representative under South Carolina law. Faced with this motion to amend, the federal district court judge presiding over the case certified questions to the South Carolina Supreme Court.

The Supreme Court answered the relevant question by concluding that the plaintiff's proposed amendment would relate back to the filing of the original Complaint under Rule 15(c), SCRCP. During its discussion of that issue, the Court stated that "[t]he purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations." 318 S.C. at 88, 456 S.E.2d at 380.

Patton quotes this statement as support for her arguments, but she takes it out of context. Although the "relation back" provision of Rule 15(c) does salvage otherwise

time-barred claims in some situations, that benefit applies only to new claims by a current party. Rule 15 says nothing about preserving time-barred claims by people who are not already parties, and the *Thomas* Court did not read that broadened scope into the rule. Indeed, the Court did not even consider that argument, as the facts in *Thomas* made it irrelevant. *Thomas* involved an attempt by the existing plaintiff to use an amendment under Rule 15(c) to preserve her own claim that was technically time-barred. There was no effort to bring in a new plaintiff. The amendment was simply a clarification that the current plaintiff was, in fact, duly authorized to pursue the wrongful death action under South Carolina law. In other words, the plaintiff went from unauthorized to authorized, but her actual identity was always the same. The Court held that type of amendment was proper, but it went no further than that. Thus, citing *Thomas* for any other proposition is inaccurate.

Patton's proposed amendment was different than the one in *Thomas* because it sought to add her as a new plaintiff. Unlike the plaintiff in *Thomas*, Patton was not one person changing hats; she was a new party throwing a second hat into the ring along with the first. *Thomas* does not suggest Rule 15 allows such an amendment, and as previously noted, Patton has not cited any other South Carolina authorities to that effect.

Patton further relies on language from the Advisory Committee Notes for the federal version of Rule 15, but the passage she cites also fails to support her position. In relevant part, those Notes state: "the attitude taken in revised Rule 15(c) toward change of defendants extends by analogy to amendments changing plaintiffs" (emphasis added). Patton overlooks the significance of the word "changing" in this sentence. The Notes do not say, or even imply, that the federal version of Rule 15 allows the addition of a new

plaintiff. Rather, they suggest the rule permits a court to change the plaintiff – *i.e.* remove the original plaintiff and include a new one in its place. Stated another way, Rule 15(c) envisions substitution of a plaintiff as a zero sum scenario. For a new one to come in, the old one must leave.

This Court's decision in *Twelfth RMA Partners, L.P. v. National Safe Corp.*[15] illustrates this point. In that collection action the defendant borrowers opposed a proposed amendment to change the name of the plaintiff so that the name in the caption would be the correct corporate name of the creditor.[16] The trial court allowed the amendment, and this Court affirmed. Significantly, though, the Court approved an amendment that changed the plaintiff from one corporate entity to another. The Court did not discuss and certainly did not validate any amendment to include a new corporate entity in addition to the old one. Again, the amendment was a straight substitution.

Patton's proposed amendment, on the other hand, would have brought a second plaintiff into the case without removing the first one. The case would have changed from "Minor vs. the Respondents" to "Minor and Angela Patton vs. the Respondents." That clearly would have constituted an addition, not a substitution. For that reason, Rule 15 is not applicable, and the denial of the motion to amend was proper.

Furthermore, Patton would not have simply stepped into the shoes of her minor daughter to "take over" a cause of action. Under the proposed amendment, Patton would have asserted a claim for her daughter's pre-majority medical expenses. Significantly, that is a claim that always belonged exclusively to Patton. This means Patton could not

---

[15] 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999)

[16] The amendment changed the name of the plaintiff from RMA Partners, L.P. to Twelfth RMA Partners, L.P.

have "taken over" for Minor in pursuing that claim because Minor never properly possessed or asserted that claim in the first place. The claim was essentially a nullity under South Carolina law, and it could not have existed with any legitimacy until Patton herself brought it. That is precisely why the circuit court granted partial summary judgment, and it demonstrates the flaw in Patton's argument.

In summation, Patton has admitted that she is not a party to this action, and the proposed amendment would have made her a new plaintiff. Patton has not cited any South Carolina authority for the proposition that Rule 15 allows for the addition of a new plaintiff (as opposed to a change or substitution of plaintiffs), and the Respondents are not aware of any such authority. Therefore, the circuit court properly denied the motion to amend, and this Court should affirm.

IV. The trial court properly ruled that the Respondents did not waive their defenses to Minor's claim for pre-majority expenses as Patton first argued in her Rule 59(e) motion.

Patton argues the Respondents waived their right to contest Minor's recovery of pre-majority expenses and related necessaries because the Respondents failed to raise this issue by affirmative defense. According to Patton, "[t]he affirmative defense is that under South Carolina Law [sic] the mother must bring [sic] cause of action for [a minor's pre-majority expenses]." [Transcript p. 40.] Patton, however, has abandoned this issue for purposes of appellate review. Nevertheless, Patton's argument is procedurally and substantively flawed because South Carolina law does not impose any such requirement on the Respondents.

a. Patton has abandoned her argument that the Respondents waived their defense to Minor's claim for pre-majority expenses by failing to challenge the trial court's ruling on that issue.

Patton improperly argued for the first time by way of her Rule 59(e), SCRCP, motion to alter or amend that the Respondents waived their right to contest Minor's recovery of pre-majority expenses because the Respondents failed to raise this issue by affirmative defense. The trial court rejected that untimely argument, concluding:

> 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 it. 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).

[Order, p. 2.]

Patton has not challenged this ruling in her Appellant's Brief. In fact, she has not even mentioned the trial court's ruling in her Brief. Thus, Patton has abandoned this issue on appeal, and the trial court's ruling has become the law of the case. *See First Union Nat. Bank of S. Carolina v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) ("Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. The unchallenged ruling, right or wrong, is the law of the case and requires affirmance.").

Likewise, Patton's failure to challenge the trial court's ruling implicates the "two-issue rule." *See Jones, supra* ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."). Patton,

therefore, has failed to preserve her argument that the Respondents waived their right to contest Minor's recovery of pre-majority expenses and necessaries.

b. Patton's argument that the Respondents waived their defense to Minor's claim for pre-majority expenses is not preserved for appeal because Patton first raised the argument by way of a Rule 59(e), SCRCP motion.

It is well-established that a Rule 59(e) motion cannot be used as a vehicle for raising new arguments. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). In *Hickman*, a family court ordered division of certain of the divorcing parties' personal property. By supplemental motion to alter or amend pursuant to Rule 59(e), SCRCP, the ex-wife sought to have the family court grant her an interest in her ex-husband's civil service retirement fund. *Id.* at 456, 392 S.E.2d at 482. The ex-wife first raised the issue of the civil service retirement fund in her motion to alter or amend. *Id.* This Court affirmed the trial court's denial of the appellant's Rule 59(e) motion, holding: "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." [17]

Patton cannot deny that she could have raised her concern with the Respondents' responsive pleadings prior to the grant of summary judgment. Patton also cannot deny that she failed to raise the issue in legal memoranda or at the July 18, 2013 hearing. The trial court, therefore, correctly concluded that Patton improperly raised the issue for the first time by way of a Rule 59(e) motion, and this Court cannot consider the issue on appeal.

---

[17] The South Carolina Supreme Court has adopted this holding by reference. *See C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E.2d 268 (1993) (citing *Hickman*).

c. The Respondents properly set forth general denials of Minor's right to seek pre-majority medical expenses because Minor is not entitled to recover for those expenses.

Even if Patton had timely raised and properly preserved her argument that the Respondents had a duty to plead Minor's inability to recover pre-majority expenses as an affirmative defense, the argument would still fail. The Respondents' position on this issue is not the kind of "affirmative defense" that has to be included and specifically delineated in a responsive pleading. Therefore, Patton's assertion is erroneous.

As Patton points out, "An affirmative defense conditionally admits the allegations of the complaint, but asserts new matter to bar the action." *FMI, Inc. v. RMAX, Inc.*, 286 S.C. 343, 347, 333 S.E.2d 360, 363 (Ct. App. 1985). But this is not the situation in the present case. The Respondents do not admit that Minor is entitled to recover for pre-majority expenses, but for some legal bar on recovery. Instead, the Respondents unequivocally deny Minor's allegation that she is entitled to recover pre-majority expenses. Because Minor cannot possibly seek the pre-majority medical expenses and necessaries, she has failed to state a claim for recovery of those expenses. Thus, it was sufficient that the Respondents all pled general denials of Minor's allegation that she is entitled to claim pre-majority expenses and necessaries.[18] Nothing more was required of the Respondents in their initial pleadings.

The Respondents were free to raise Minor's failure to state a claim for pre-majority medical expenses and necessaries by way of a subsequent pleading, motion, or even at trial. *See* SCRCP R. 12(b)(6), (h)(2). *See also* James G. Flanagan, *South Carolina*

[18] In fact, Amisub specifically raised the defense of failure to state a claim in its April 24, 2012 Answer. *See* ¶ 11 ("In answer to paragraph 21, it is admitted that Plaintiff has complied with statutory requirements to commence an action, but it is denied Plaintiffs [sic] have a valid cause of action.").

Civil Procedure 3rd (2010) ("Rule 12(h)(2) lists two non-waivable defenses: the failure to state a claim or defense;...."). The Respondents did just this, raising the issue by summary judgment motions. As a result, the trial court correctly ruled that the Respondents properly and timely raised Minor's inability to recover pre-majority medical expenses and related necessaries both by general denials and by motions.

d. No amount of notice would have allowed Patton to commence a timely action for Minor's pre-majority medical expenses and necessaries against Amisub.

Even if Patton were correct that the Respondents had a duty to raise Minor's inability to recover pre-majority expenses by way of an affirmative defense, Patton still would not be able to salvage her claim for Minor's pre-majority expenses and necessaries. The requirement that affirmative defenses must be pled aims to "avoid the 'surprise' defenses permissible under the old general denial answer ...." Rule 8, SCRCP, Editor's Notes. Patton, however, has not suffered any prejudice as a result of her feigned "surprise" at Amisub's defenses to Minor's attempt to recover pre-majority expenses. Instead, Patton admits that by waiting until September 23, 2011, to commence her action against Amisub, "suit was filed in this matter outside the three-year statute of limitations on Amisub ...." [Transcript, p. 26.] As such, no amount of notice could have given Patton time within the limitations period to amend and properly plead recovery of pre-majority medical expenses against Amisub. Therefore, Patton's arguments on this issue must fail, and the result below should be affirmed.

CONCLUSION

This appeal amounts to nothing more than an attempt to change multiple established tenets of South Carolina law. The Appellant cannot win based on the existing law, and so she asks this Court to abrogate those rules. Yet, she has failed to explain why should could not have followed the law, and she has not demonstrated any compelling reasons for this Court to alter the law. Therefore, this Court should affirm the trial court's decision to follow the existing law and grant partial summary judgment to the Respondents.

Respectfully submitted,

Turner Padget Graham & Laney P.A.

R. Hawthorne Barrett

Thomas C. Salane
R. Hawthorne Barrett
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200
TSalane@TurnerPadget.com
TBarrett@TurnerPadget.com

Attorneys for the Respondents Dr. Gregory A. Miller and Rock Hill Gynecological & Obstetrical Associates, P.A.

Holcombe Bomar, P.A.

William U. Gunn (by R. Hawthorne Barrett, with permission)

William U. Gunn
Joshua T. Thompson
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
bgunn@holcombebomar.com
jthompson@holcombebomar.com

Attorneys for Respondent Amisub of South Carolina d/b/a Piedmont Medical Center

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YOUR 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.

Proof of Service

The undersigned, attorneys in this matter for the Respondents, certifies that we have this **12th day of August, 2014**, served copies of the **Initial Respondents' Brief** and **Designation of Matter to be Included in the Record on Appeal** upon counsel of record for the Appellant by causing them to be deposited in the United States mail with sufficient postage attached, addressed to: Edward L. Graham, Esq., and J. Layton Ruffin, Esq.; Graham Law Firm; 383 W. Cheves St.; Florence, SC 29501.

(Signature on next page.)

R. Hawthorne Barrett
Thomas C. Salane
R. Hawthorne Barrett
Turner Padget Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200
TSalane@TurnerPadget.com
TBarrett@TurnerPadget.com

Attorneys for the Respondents Dr. Gregory Miller and Rock Hill Gynecological & Obstetrical Associates, P.A.

William U. Gunn (by R. Hawthorne Barrett with permission)
William U. Gunn
Joshua T. Thompson
Holcombe Bomar, P.A.
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
bgunn@holcombebomar.com
jthompson@holcombebomar.com

Attorneys for Respondent Amisub of A. South Carolina d/b/a Piedmont

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

REPLY TO:

R. Hawthorne Barrett

E-Mail: TBarrett@TurnerPadget.com
Writer's Direct Dial: (803) 227-4219
Direct Fax: (803) 400-1454

August 12, 2014

VIA HAND DELIVERY

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter St.
Columbia, SC 29201

Re: Angela Patton v. Dr. Gregory A. Miller, et al.
Appellate Case No.: 2013-002670
Our File No.: 10350.109

Dear Ms. Kitchings:

Enclosed are the originals and one copy each of the following materials: (1) the Initial Respondents' Brief (on behalf of all respondents); (2) the Designation of Matter to be Included in the Record on Appeal; and (3) the Proof of Service. Please file the originals and return the extra stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

R. Hawthorne Barrett

R. Hawthorne Barrett

RHB:
Enclosures

cc: Edward L. Graham, Esq.
J. Layton Ruffin, Esq.
William U. Gunn, Esq.
Joshua T. Thompson, Esq.