THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

KRISTI LEA HARRINGTON, Circuit Court Judge

Appellate Case No.: 2013-002177
Case No. 2012-CP-10-5366
(NOI) and 2013-CP-10-4475

JOHNNY EADES AND BARBARA EADES. . . . . Appellants,

v.

PALMETTO CARDIOVASCULAR AND THORACIC, PA; JAMES M. BENNER, MD; MARK J. EPLER, MD; TRIDENT MEDICAL CENTER, LLC; COLUMBIA/HCA HEALTHCARE CORPORATION OF SOUTH CAROLINA; HCA HEALTHCARE-SOUTH CAROLINA; TRIDENT MEDICAL CENTER; TRIDENT HEALTH SYSTEM; PALMETTO PRIMARY CARE PHYSICIANS, LLC; TRIDENT EMERGENCY PHYSICIANS, LLC; BRIAN R. WHIRRETH, MD; PATRICIA CAMPBELL, MD; CHRISTINE E. MCNEAL, MD; MATTHEW WALLEN, MD; CHARLESTON RADIOLOGISTS, PA; JOSEPH M. MULLANE, MD; TRI-COUNTY RADIOLOGY ASSOCIATES, PA; AND TROY MARLON, MD,. . . . . .Defendants;

OF WHOM

PALMETTO CARDIOVASCULAR AND THORACIC, PA; JAMES M. BENNER, MD; MARK J. EPLER, MD; PALMETTO PRIMARY CARE PHYSICIANS, LLC; AND, TRIDENT EMERGENCY PHYSICIANS, LLC, ...Respondents.

FINAL REPLY BRIEF OF APPELLANTS

November 24, 2014

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ARGUMENT

INTRODUCTION

a. The issues are properly before this Honorable Court.

There are two issues before this Honorable Court. First, the Circuit Court dismissed the NOI because the expert affidavit was filed two days after the NOI. Second, the Circuit Court relied upon the ruling in Ranucci that Section 15-36-100(C)(1) does not apply to NOI's. Both issues were raised and ruled upon by the Circuit Court as is referenced in more detail below.

It is undisputed that the Appellants' were unable to file an expert affidavit with the Notice of Intent to File Suit due to a miscommunication with a doctor's office hundreds of miles away. Counsel for the Appellants elected to file the Notice of Intent, in order to toll the statute of limitations pursuant to Section 15-79-125. The expert affidavit, was received by counsel the afternoon after filing of the NOI, and it was filed with the Court the following day (two days after filing of the NOI).

The Circuit Court dismissed the NOI. It is well known to Respondents' Counsel, that the dismissal was solely on the basis that the expert affidavit was filed two days after the NOI. So it is abundantly clear that the First Question before this Honorable Court is whether the Circuit Court erred in dismissing the NOI for that reason.

Second, the Circuit Court relied entirely in its dismissal of the NOI on Ranucci v. Crain. As is well known to Respondent's Counsel, the dispositive ruling of Ranucci, is that the 45 day rule of Section 15-36-100(C)(1) does not apply to Notices of Intent to File Suit. It is undisputed that Counsel for the Appellents complied with the requirements of Section 15-36-100(C)(1). So it is abundantly

clear to all Counsel in this case that the Second Question before this Honorable Court is whether Ranucci was correctly decided.

It is respectfully submitted that the two Questions are sufficiently concise and direct to comply with Appellate Rule 208 (b)(B). All Counsel involved in this case know that the only reason for dismissal was the two days between filing of the NOI and the expert affidavit. All Counsel involved in this case know that the only basis in Ranucci for dismissal of the NOI is the holding that Section 15-36-100(C(1) in inapplicable to NOI's.

b. Legislative Intent.

It is undisputed that the first rule in the interpretation of statutes is to determine and apply the intent of the legislature.

Respondents give lip service to this rule, but they are not explicit in arguing the legislature's intent other than to argue for the result they want: do not adjudicate the merits of the case.

The Respondents view of the case leads to legislative intent as follows:

It is our intention to enact a statute requiring a plaintiff in a professional negligence suit against certain professionals, including physicians, to file an expert affidavit at or near the commencement of the case, alleging at least one specification of negligence. It would be unduly harsh to require the affidavit with the summons and complaint if a statute of limitations issue is present. So the requirements of filing of the affidavit with the summons and complaint are relaxed for a 45 day period where there is a statute of limitations issue. This new statute will go into effect on July 1, 2005. Section 15-36-100.

For medical malpractice cases involving physicians and other health care

providers, it is our intention to require the filing of a Notice of Intent to File Suit prior to filing a Summons and Complaint. The purpose of this additional statute is to require mediation before the filing of the Summons and Complaint. It is our intention that an affidavit of an expert witness be filed contemporaneously with the Notice of Intent to File Suit. This statute will also go into effect on July 1, 2005. Section 15-79-125.

It is our intention that actions commenced against physicians pursuant to Section 15-36-100 are to have an additional 45 days to file an expert affidavit when a statute of limitations issue is present. But, a summons and complaint cannot be filed against a physician until a Notice of Intent to File Suit is first filed pursuant to Section 15-79-125. The Notice of Intent to File Suit tolls the statute of limitations. But it is our intention that under no circumstances, even if there is a statute of limitations issue present, shall an affidavit be allowed to be filed at any time after the filing of the Notice of Intent to file suit. No exceptions for any reason are to be considered, and the Court has no discretion.

It is our intention that the affidavit requirements of Section 15-36-100 shall apply to the NOI statute. But while we say that the affidavit requirements of Section 15-36-100 apply to the NOI statute, what we really mean is that all of the affidavit requirements of sub-Section 15-36-100(A) and (B) apply, but the requirements of sub-Section 15-36-100(C)(1) do not apply to the NOI statute. This is because a statute of limitations issue is important to the commencement of an action by a summons and complaint, but where the proceedings are commenced by a Notice of Intent, statutes of limitations are not important. We could have specified the sub-sections that apply, but we don't choose to do so.

It is true that sub Section 15-36-100(C)(1) states explicitly that the contemporaneous filing requirement of subsection (B) does not apply where there is a good faith basis to believe there is a statute of limitations problem within 10 days. However, it is not our intention for this to apply to cases against physicians, even though Section 15-36-100(G) states that Section 15-36-100 applies to physicians. It is our intention that subsection (C)(1) shall apply to physicians, but it shall not apply to physicians (because of Section 15-79-125). In other words it is the intention of the legislature that it shall apply to physicians, but it shall not apply to physicians at the commencement of proceedings. It is our intention that subsection (C)(1) shall apply and not apply to physicians at the commencement of proceedings.

It is respectfully submitted that a more plausible legislative intent is as follows:

It is our intention to enact a statute requiring plaintiffs in professional negligence actions against certain professionals, including physicians, to require an expert affidavit with at least one specification of negligence be filed at or near the commencement of the case. Where a statute of limitations issue is near, the plaintiff shall have an additional 45 days to file the expert affidavit. Section 15-36-100.

For health care professionals, including physicians, it is our intention to also require mediation before filing of a summons and complaint. Section 15-79-125. In order for the two statutes to be harmonious, the affidavit requirements of Section 15-36-100 shall apply to the NOI statute. Section 15-79-125. Where there is a statute of limitations issue near, we intend for the affidavit requirements under the NOI statute to be the same as Section 15-36-100. If we had intended for Section 15-

36-100(C)(1) to not apply to the NOI Statute we would have said so. We could easily have said "only the affidavit requirements of subsections (A) and (B) apply to Section 15-79-125." Or we could have said the affidavit requirements of sub Section 15-36-100(C(1) do not apply to the NOI statute. But that would have been both illogical and unjust. We intended for the two statutes to be harmonious and equal as to the affidavit requirements. Where there is a statute of limitations issue present, we did not intend for the NOI statute affidavit requirements to be more stringent than Section 15-36-100. If that were our intention we could easily have said so.

It is our intention that the two statutes be parallel and equal as to affidavit requirements, and that includes the affidavit requirements when a statute of limitations issue is near.

The title of Section 15-36-100 makes it clear that in its entirety it applies to a "Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission." Even though the statute is for "complaint(s)" the affidavit requirements are explicitly adopted entirely into Section 15-79-125. That is exactly what the statute says, that is what it means, and that is our legislative intention. It is preposterous to suggest that we would not intend to apply exactly the same affidavit requirements when a statute of limitations is present, whether the proceedings are commenced by an NOI or a summons and complaint.

c. Discretion of the Court.

The Respondents have contended that there is no discretion on the part of the Court as it relates to Section 15-79-125. If that were the case, the Court would be

crippled in its function of providing a forum for the resolution of disputes. There is implied discretion for the Court to make adjustments to avoid blatant injustice and absurd results. Rule 1 of the SCRCP states regarding the SCRCP that, "They shall be construed to secure the just, speedy, an inexpensive determination of every action." When a Motion to Dismiss is made under the rules of civil procedure, the Court has the discretion and the duty to see that it is resolved in a just way.

The Court also has the inherent right of discretion in interpreting the statutes at issue. For both Section 15-36-100 and for Section 15-79-125, the Court has discretion to apply the law in a just way. For example, if there were a power failure which prevented the obtaining and filing of an affidavit, for a day or two, it would be unjust to throw the plaintiff out of court under either statute. By the same token, where there is a miscommunication with a doctor's office hundreds of miles away, as in this case, the filing of the affidavit two days after the filing of the NOI should be permitted.

A. THE QUESTIONS PRESENTED BY APPELLANTS ARE PROPER, AND THE ISSUES WERE PRESENTED TO AND RULED UPON BY THE TRIAL COURT

The Appellants raise two issues as to all Respondents. First, whether the Notice of Intent to File Suit should have been dismissed in this case where the expert affidavit was prepared and signed, but filed two days after the Notice of Intent because of miscommunication with a doctor's office hundreds of miles away. Second, whether the Ranucci v. Crain decision correctly ruled that Section 15-36-100(C)(1) regarding the 45 day rule does not apply to the filing of notices of intent to file suit.

These issues were raised and ruled upon by the trial court. As to the First Question, Appellant's Counsel made an extensive oral argument and filed a detailed Memorandum Opposing Motions to Dismiss, that the two day gap between filing of the NOI and the expert affidavit was an inappropriate basis for dismissal of the NOI. See Plaintiffs' Memorandum in Opposition to the Motions to Dismiss, R. pp. 44-45; Part A (1), R. p.45, line 14 - p. 46 line 21; Part A(3), R. p.48, line 4 - p.49, line 4; Part A(4), p. 49, lines 5-16; and, Conclusion, R. pp. 54-55. See also, Transcript of Hearing, R. p.63 line 23 through p. 64, line 5.; p. 65, line 22 through p. 66, line 6; p. 66, line 1 through p. 70, line 5. The Plaintiff argued in the Memorandum In Opposition to the Motion to Dismiss that, "The two days between the filing of the Notice of Intent to File juit and the Affidavit of Dr. Skudder did not prejudice any Defendant in any way." Memorandum, R. P. 46, lines 18-19. Counsel for the Plaintiff prepared the affidavit and forwarded it to the doctor on August 14, it was signed on August 15, but is was not returned to Counsel until August 16, and it was filed on the morning of August 17. Meanwhile, the Notice of Intent to File Suit was filed on August 15." Memorandum, R. p. 47, lines 2-7. "The Statute requires that the Plaintiffs 'contemporaneously' file a Notice of Intent to File Suit and an affidavit of an expert witness. The meaning of the word 'contemporaneously,' must not be ignored. Events which are "contemporaneous" occur during the same period. On the other hand events which are 'simultaneous' occur at the same time. 'Simultaneous' events are a subset of 'contemporaneous' events." Memorandum, R. p. 48, line 4 – p. 49, line 4. "The filing of the Affidavit of Dr. Skudder two days after the filing of the Notice of Intent to File Suite in no

way prejudices any Defendant, and is not in conflict with Section 15-79-125.' Memorandum, R. p. 54, lines 16-18. At the hearing Counsel for the Appellants stated "First of all, I would like to address the issue of the simultaneous filing, which all of the defendants have raised. Transcript of Hearing, R. p. 62 lines 23-25. Counsel stated, referring to Ranucci, "It was not before the court whether There are any exceptions under 15-79-125." Transcript of Hearing, p. 65 lines 1-2. For additional argument as to simultaneous filing of the affidavit as opposed to contemporaneous filing see R. p.68, lines 5-19. Counsel for the Appellants, in response to the Court's question, stated the reason for filing the notice before receiving the affidavit, "I wanted to file that and take the most conservative position I could, because that's the date that the aneurysm ruptured. So I wanted it filed on that day." Transcript of Hearing, R. p. 69, lines 21-24.

The trial court in its Order explicitly ruled "...this Court finds Plaintiff's Notice of Intent to File Suit should be dismissed for failing to file the expert affidavit contemporaneously with their Notice of Intent to File Suit."

As to the Second Question, Appellants' Memorandum in Opposition to Motions to Dismiss at the trial court level, Counsel for Appellants asserted as follows:

"It is respectfully submitted that Section 15-79-125 adopts not only Section 15-36-100(A), but it adopts the other provisions of Section 15-36-100 regarding affidavits as well. Section 15-79-125 explicitly refers to the affidavit provisions of Section 15-36-100. If the legislature intended the affidavit matters to be limited to Section 15-36-100(A), it obviously would have stated that limitation clearly in

Section 15-79-125. To hold otherwise is to rewrite the statute.

"It would make no sense to hold plaintiffs to a higher standard regarding affidavits at an earlier stage of proceedings, with presumably less information, than later. Such would be arbitrary and without a rational basis. The Plaintiffs recognize that this position is in conflict with the Ranucci case, and respectfully submits that case is erroneous in that regard.

"Obviously, the application of Section 15-36-100(C) would require the denial of the Defendants' motions to dismiss...." Plaintiff's Memorandum in Opposition to Motions to Dismiss. R. p. 52, lines 21-22.

The trial court clearly ruled that Ranucci was correct in that regard stating,"The holding in Ranucci is clear – the expert affidavit must be filed with the Notice of Intent to File Suit. This Court finds the failure to file the expert affidavit at the same time as the Notice of Intent to File Suit requires dismissal of this matter because the affidavit was not filed contemporaneously with the Notice of Intent to File Suit." Order of Trial Court, R. p. 4, lines 16-20.

The Appellants respectfully request that this Honorable Court address the issues raised in the appeal.

B. IT WAS ERROR FOR THE CIRCUIT COURT TO DISMISS THE APPELLANTS' NOTICE OF INTENT TO FILE SUIT BECAUSE TWO DAYS HAD PASSED BETWEEN FILING OF THE NOTICE OF INTENT TO FILE SUIT AND FILING OF THE AFFIDAVIT

It is reasonable to infer that the purpose of the legislature in enacting Section 15-79-125 was to provide for mediation before the filing of a summons and complaint. It is also reasonable to infer that the purpose of the legislature was to

require an affidavit showing at least one specification of negligence a reasonable time before the mediation.

It is not reasonable to infer that the legislature intended that under no circumstances, and with no exceptions, that the Notice of Intent to File Suit must be dismissed where the affidavit is not filed "simultaneously" with the NOI. The statute does not state that there are no exceptions and that there is no discretion with the Court. Even if one believes that Section 15-36-100 (C)(1) does not apply, it still, by analogy, shows that the legislature intended reasonable application where a statute of limitations issue was near.

It is important for this Honorable Court to rule that the statute must be applied in a reasonable and just fashion. It is respectfully submitted that under the facts of this case, the NOI should not have been dismissed. The Respondents had the affidavit long before the mediation and long before service of the NOI. Also, the affidavit was filed long before the 45 day period in the parallel statute.

The purposes of the statute were completely fulfilled, the affidavit was filed long before the mediation, and the mediation, which was the obvious purpose of the statute was completed. There is no legislative intent imaginable which would approve the denial of the opportunity to litigate the merits of this case. The two day delay was reasonable under the circumstances.

The Respondents take the position that Section 15-19-125 has no exceptions to the requirement that an affidavit must be filed simultaneously with the Notice of Intent to File Suit. Their position is that the statute does not under any

circumstances permit the filing of an affidavit at any time other than at the instant the Notice of Intent is filed.

If Section 15-36-100(C)(1) applies, then the issue is resolved in favor of the Appellants since there is no dispute that the Appellants complied with the provisions of that section. However, if that section does not apply, there is a question of whether Section 15-79-125 itself provides any relief. It is respectfully submitted that it does.

Section 15-79-125 does not state that the affidavit becomes a part of the NOI. It specifically assumes that it may be separate since it states that the filing of the NOI tolls the statute of limitations. Also, as expressed many times by Counsel in memorandum and argument, "contemporaneous," in this section is different than "simultaneous." The word "contemporaneous" means during the same period. It is not ambiguous as asserted by Respondents, but it must be reasonable.

The filing of an affidavit two days after the Notice of Intent to File Suit, is reasonable under the circumstances of this case. There was a miscommunication with a doctor's office, and the affidavit, while signed on the day it was needed, was not available because it was not sent to counsel until the next day.

The Appellants respectfully request that this Honorable Court rule that the dismissal of the NOI because of the filing of the expert affidavit two days after the NOI, was error, and that this case be reversed and remanded.

C. THE RANUCCI CASE WRONGLY DECIDED THAT SECTION 15-36-100(C)(1) DID NOT APPLY TO THE NOI STATUTE, SECTION 15-79-125.

The Respondents argue that an appellate court cannot construe a statute

contrary to its plain meaning and may not resort to a forced interpretation. Yet that is exactly what the Respondents are advocating. And, respectfully, that is exactly what was done in the Ranucci decision.

Section 15-79-125 explicitly incorporates the "affidavit requirements" of Section 15-36-100. That plainly means all of the "affidavit requirements." It includes the affidavit requirements of Section 15-36-100 when a statute of limitations issue is present. The statute provides clear requirements for the filing of affidavits when a statute of limitations is near. It requires that Plaintiff's counsel state that there is good faith reason to believe that a statute of limitations would expire within 10 days. And it requires that the expert affidavit be filed within 45 days.

It is a forced interpretation to claim that only part of the requirements of Section 15-36-100 apply. It is a rewriting of the statute with unjust results which are clearly contrary to the intent of the legislature. The statute plainly states that the affidavit "requirements" of Section 15-36-100 are incorporated into Section 15-79-125. Obviously, this includes the requirements of Section 15-36-100(C)(1) which a Plaintiff is required to follow when a statute of limitations issue is near.

This is made even more clear by the fact that Section 15-36-100(C)(1) explicitly states that the contemporaneous filing "requirement" of "subsection (B) does not apply when a statute of limitations issue is close. Subsection (B) is distorted and unjust without subsection (C).

It is a red herring argument to contend that because subsection (C)(1) applies to a summons and complaint that it can't also apply to an NOI. Of course it can apply. All of Section 15-36-100 applies to a summons and complaint.

Obviously, the legislature knew that Section 15-36-100 applies to a complaint, but it intended for all of the affidavit requirements of Section 15-36-100 to also apply to the Notice of Intent. It would have been supremely easy for the legislature to state that Section 15-36-100(C)(1) does not apply to the NOI statute. But the legislature did not make that exception because it would be illogical and unjust.

It makes no sense for the legislature to pass statutes to go into effect at the same time that provided for the 45 day rule for a summons and complaint against a physician, and a requirement to file an NOI before filing the summons and complaint against a physician, and no 45 day rule for the NOI.

It is obvious that the intent of the legislature was to harmonize the statutes with respect to the 45 day rule. The dissonance is deafening when the 45 day rule is prohibited for the NOI. The statutory scheme is rendered chaotic, unjust, dissonant, inexplicable, without sound judgment, and monstrous, when the 45 day rule is not allowed for the NOI.

D. THE CIRCUIT COURT ERRED IN RULING THAT THE AFFIDAVIT OF DR. SKUDDER WAS INSUFFICIENT AS TO THE RESPONDENTS PALMETTO PRIMARY CARE PHYSICIANS, LLC AND TRIDENT EMERGENCY PHYSICIANS, LLC.

The above two Respondents take the position that only an emergency care specialist and only a family practice physician can express any expert opinion as to the standard of care for emergency care physicians and for family practice physicians.

There is much that overlaps between the work of physicians of various types. For example, an ER physician, a family physician, and a surgeon, would all be qualified to render an opinion on the standard of care for stopping blood flow from

an artery.

Also, sometimes a health care professional with superior knowledge of a matter can give an opinion as the standard of care for a health care professional with less knowledge. For example, a surgeon could render an opinion as to whether an ER physician or a nurse properly applied a tourniquet.

In the case before this Honorable Court, ER physicians, family physicians, and surgeons all performed examinations of Mr. Eades, and they all reviewed the patient's medical records. They all did this in regard to Mr. Eades' occluded arteries, aneurysms, and related medical issues. Among the specifications of negligence identified in Dr. Skudder's affidavit were failure to consult records of the recent admission, and failure to properly examine the patient.

Dr. Skudder's affidavit explicitly states that he is a medical doctor with extensive experience with occluded arteries, aneurysms, and related medical issues. He does not have to be an ER specialist or a family practice specialist to render an opinion that the other medical doctors breached the standard of care when they failed to consult the record of the recent admission. Also, as a medical doctor, he is qualified to render an opinion as to the standard of care for an examination of the patient. Affidavit of Dr. Skudder, R. pp. 18-19.

The fact that he has more knowledge regarding occluded arteries, aneurysms, and related medical issues, renders him more capable of rendering opinions regarding the standard of care for examination, treatment, and need to consult the medical records.

Also, Section 15-36-100(A)(3) permits affidavits from an individual that has "scientific, technical, or other specialized knowledge which may assist the trier of

fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both." Clearly a medical doctor who actively practices concerning the very health issues of Mr. Eades, and a board certified vascular surgeon, has extensive scientific, technical, and other specialized knowledge which may assist the trier of fact in understanding evidence and determining a fact or issue in the case. Dr. Skudder's affidavit clearly indicates that he has specialized knowledge regarding occluded arteries, aneurysms, and related medical issues of patients under the same or similar circumstances as Mr. Eades. Affidavit of Dr. Skudder, R. p. 18, Paragraph 2.

E. PALMETTO PRIMARY PHYSICIANS, LLC AND TRIDENT EMERGENCY PHYSICIANS ARE PROPER PARTIES TO THIS ACTION AND APPEAL

The Respondents Palmetto Primary Physicians, LLC, and Trident Emergency Physicians have, in their brief, raised the issue that they are no longer proper parties to this action and to this appeal because the Appellants did not pursue the case as to their employees.

Respondents apparently are relying on cases in which there was a verdict on the merits exonerating the employee, and therefore exonerating the employer as well. Also, Respondents appear to rely on cases in which a release was given as to the employee, and therefore the employer was released as well.

However, there has been no adjudication on the merits as to these Respondents' employees, and there has been no release to these Respondents employees. In fact these employees were not served with the NOI or Summons and Complaint. There has been no adjudication on the merits of any of the claims of this matter, and no release has been given to any party in this matter.

Counsel is aware of no authority that requires a finding of liability on an

employee in order to litigate with the employer.

CONCLUSION

The Appellants respectfully submit that they have fully complied with the intended purposes of the NOI statute. The legislature intended that plaintiffs seeking to commence an action against a physician or other health care provider first file a Notice of Intent to File Suit. The legislature intended that the defendants be given fair notice of at least one specification of negligence through the affidavit of an expert. And the legislature intended that mediation be attempted before the filing of a summons and a complaint.

In this case the Appellants substantially complied with the statute. A Notice of Intent to File Suit was filed. There was a miscommunication with the expert witness's office which delayed transmittal of the affidavit to counsel for one day. Counsel elected to file the Notice of Intent to File Suit prior to receiving the affidavit, in order to toll the statute of limitations. Section 15-79-125 specifically provides that filing of the Notice of Intent to File Suit tolls the statute of limitations. Section 15-79-125 does not make the affidavit a part of the Notice of Intent to File Suit. So it is clearly anticipated that on occasion a Notice of Intent to File Suit would be filed without an affidavit. Filing of the expert affidavit two days after the NOI was reasonable under the undisputed circumstances present in this case. The use of the word "contemporaneous" instead of "simultaneous" further supports the position that the statute contemplates that on occasion it would be necessary to file the NOI before the expert affidavit.

Also, in order to be worthy of the high responsibilities placed upon Courts, they must be able to interpret statutes consistent with legislative intent and with

rationality and substantial justice. There is no reason in policy or in logic to deny the Appellants the right to adjudicate their case on the merits.

It is respectfully submitted that the Ranucci case was wrongly decided, and it should be reversed. It is clear that the legislature intended that all of the affidavit "requirements" of Section 15-36-100 be included in Section 15-79-125. That includes the affidavit requirements of Section 15-36-100(C)(1).

Dr. Skudder is clearly qualified to render an opinion on standard of care as it relates to the need to review the medical record of the recent admission, and as it relates to the examination of the patient. He is qualified to render an opinion on these matters as to the area of practice including occluded arteries, aneurysms, and related medical issues such as those of Mr. Eades.

There has been no adjudication on the merits and no release as to the employees of Palmetto Primary Physicians, LLC, and Trident Emergency Physicians, LLC. Therefore those two respondents are proper parties to this appeal.

Therefore, the Appellants respectfully request that the Order of the Circuit Court be dismissed and that this case be remanded for adjudication on the merits.

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RULE 211 (B) CERTIFICATE OF COMPLIANCE

The undersigned attorney for the Appellants, hereby certifies that the Final Reply Brief of Appellants complies with Rule 211 (b) of the SCACR.

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JOHNNY EADES AND BARBARA EADES. . . . . Appellants,

v.

PALMETTO CARDIOVASCULAR AND THORACIC, PA; JAMES M. BENNER, MD; MARK J. EPLER, MD; TRIDENT MEDICAL CENTER, LLC; COLUMBIA/HCA HEALTHCARE CORPORATION OF SOUTH CAROLINA; HCA HEALTHCARE-SOUTH CAROLINA; TRIDENT MEDICAL CENTER; TRIDENT HEALTH SYSTEM; PALMETTO PRIMARY CARE PHYSICIANS, LLC; TRIDENT EMERGENCY PHYSICIANS, LLC; BRIAN R. WHIRRETH, MD; PATRICIA CAMPBELL, MD; CHRISTINE E. MCNEAL, MD; MATTHEW WALLEN, MD; CHARLESTON RADIOLOGISTS, PA; JOSEPH M. MULLANE, MD; TRI-COUNTY RADIOLOGY ASSOCIATES, PA; AND TROY MARLON, MD,. . . . . .Defendants;

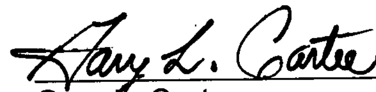
OF WHOM

PALMETTO CARDIOVASCULAR AND THORACIC, PA; JAMES M. BENNER, MD; MARK J. EPLER, MD; PALMETTO PRIMARY CARE PHYSICIANS, LLC; AND, TRIDENT EMERGENCY PHYSICIANS,LLC, ...Respondents.

PROOF OF SERVICE

The undersigned counsel for the Appellants hereby certifies that he has served the Final Brief of Appellants and Final Reply Brief of Appellants in this matter by depositing copies in the United States Mail, postage prepaid, on November 24, 2014, addressed to the Respondents' attorneys of record as follows: Thomas C. Salane, Esq.,R. Hawthorne Barrett, Esq., Turner Padgett Graham & Laney P.A., PO Box 1473,

Columbia, SC 29202; Andrew F. Lindemann, Esq., Davidson & Lindemann, P.A., PO Box 8568, Columbia, SC 29202; Darren K. Sanders, Esq., Buyck & Sanders Law Firm, LLC, PO Box 2424, Mt. Pleasant, SC 29465-2424; William C. McDow, Esq., Richardson Plowden & Robinson, PA, PO Drawer 7788, Columbia, SC 29202; D. Jay Davis, Jr., Esq., Stephen L. Brown, Esq., Russell G. Hines, Esq., Young Clement Rivers, LLP, PO Box 993, Charleston, SC 29402; and Hutson S. Davis, Jr., Esq., Jason W. Ward, Esq., Johnson Davis Ward, PA, 10 Pinckney Colony Road, Victoria Bldg., Suite 200, Bluffton, SC 29909.



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