

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JAN 05 2015

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

SC Court of Appeals

The Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2013-000717
Case No: 2011-CP-40-08373

Joseph D. McMaster, Appellant,

v.

John H. Dewitt, M.D., and Carolina Psychiatric Services, P.A., Respondents.

RESPONDENT CAROLINA PSYCHIATRIC SERVICES, P.A.'S
RETURN IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING

I. INTRODUCTION

This Court affirmed the Order of the Richland County Court of Common Pleas granting summary judgment for both Respondents and finding the statute of limitations barred Appellant's claim in its decision filed December 3, 2014. Appellant filed his Petition for Rehearing in this Court on or about December 18, 2014. For the reasons stated herein, as well as those set forth in its Brief and oral argument before the Court, Respondent Carolina Psychiatric Services, P.A. submits the Court's well-reasoned Opinion reached the correct result. As such, Appellant's Petition for Rehearing should be denied.

II. ARGUMENT

Appellant's Petition for Rehearing essentially advances the same facts and arguments previously submitted to this Court in his briefing and oral argument. He contends – without any additional supporting bases – that this Court either misapprehended his arguments on appeal or applied existing law incorrectly. These assertions are incorrect, however, as this Court applied the appropriate law and standard of review, carefully considered the briefing and oral argument submitted by the parties, and correctly determined the statute of limitations barred Appellant's claim. As such, rehearing is unnecessary, and Appellant's Petition should be denied.

The bulk of Appellant's fifteen grounds for reconsideration consist of his arguments that the Court placed too much emphasis on Appellant's testimony regarding exactly when he was on notice of a claim, that the Court misapprehended when a reasonable person would have been on notice of a claim under similar circumstances, and that the Court incorrectly agreed with the circuit court's decision to exclude Appellant's affidavit as a "sham" affidavit. These are the identical arguments Appellant advanced in his briefing and argument to the Court, and Appellant has not presented any salient argument that the Court's well-reasoned opinion in this case is incorrect. Appellant's Petition should be denied on this basis.

On the notice question, the undisputed evidence revealed, and the Court was persuaded, that "the evidence demonstrates McMaster suffered an injury in May 2008, the circumstances of which put him on notice to inquire into whether this injury gave rise to a claim against Dr. Dewitt." (Op. No. 5282 (S.C. Ct. App. filed Dec. 3, 2014) (Shearouse Adv. Sh. No. 48 at 25)) This conclusion is bolstered by Appellant's own

testimony, quoted *verbatim* in the Court's Opinion, to the effect that he was aware in May 2008 of a claim against Dr. Dewitt. (*Id.* at 25-26) More importantly, the Court noted that any conflict in Appellant's discharge summaries was "immaterial" in light of this testimony, which also undermines any contention that Dr. Dewitt did not know in May that Adderall necessitated Appellant's hospitalization.

Turning to the "sham" affidavit issue, McMaster now argues that the timing of Respondents' motion for summary judgment and the availability of his deposition transcript were somehow responsible for the delay in the filing of his affidavit. As the Court observed, however, "McMaster's affidavit contains no justification. In fact, the affidavit makes no reference to his deposition testimony at all." (Op. No. 5282 (S.C. Ct. App. filed Dec. 3, 2014) (Shearouse Adv. Sh. No. 48 at 30)) The Court correctly reviewed the record and correctly applied the law of this State regarding sham affidavits. Accordingly, rehearing on this issue is not necessary or warranted, and Appellant's Petition should be denied.


III. CONCLUSION

The Court's Opinion fully addresses all of the issues on appeal, and it correctly decided those issues. Appellant's Petition for Rehearing does not demonstrate otherwise, and there is no reason for the Court to revisit its decision. For these reasons, Appellant's Petition for Rehearing should be denied in its entirety.

(Signature page to follow.)

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

January 5, 2015

By:  _____

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Joseph D. McMaster, Appellant,

v.

John H. Dewitt, M.D., and Carolina Psychiatric Services, P.A., Respondents.

PROOF OF SERVICE

I certify this 5th day of January 2015 that I have served a copy of RESPONDENT CAROLINA PSYCHIATRIC SERVICES, P.A.'S RETURN IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING upon other counsel of record, by mailing same, postage prepaid in the United States mail, addressed to the following:

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JOHN H. DEWITT, M.D.

(Signature page to follow.)

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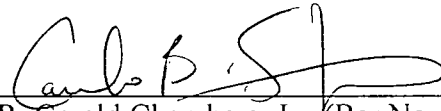
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January 5, 2015

VIA HAND DELIVERY:

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Joseph D. McMaster v. John H. DeWitt, M.D. and Carolina Psychiatric Services, P.A.
Appellate Case No.: 2013-000717
File No.: 888.411

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondent Carolina Psychiatric Services, P.A.'s Return In Opposition To Appellant's Petition For Rehearing regarding the above-referenced action. Also enclosed are the original and one copy of the Proof of Service. Please file the original documents and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Charles L. Henshaw, Jr., Esquire
James Edward Bradley, Esquire
John C. Bradley, Jr., Esquire
(w/enc.)

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