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STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
Court of Common Pleas

Honorable William P. Keesley, Circuit Court Judge

C.A. No. 2007-CP-32-1981
App. No. 2014-001511

Martha Lewin Argoe,

Appellant,

v.

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor; Phyllis Bryant-Mobley, MD, David A Steiner, MD; Cheryl C Dodds, MD; Doris Ann Burrell, RN and the Carolina Care Plan,

Respondents.

INITIAL BRIEF OF RESPONDENT DAVID A. STEINER, M.D.

Hood Law Firm, LLC

Elloree A. Ganes, S.C. Bar No. 70509
Deborah H. Sheffield, *Of Counsel,* S.C. Bar No 2757
P.O Box 1508
Charleston, SC 29402
(843) 577-4435

Attorneys for Respondent
David A. Steiner, M.D.

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STATEMENT OF THE ISSUES ON APPEAL

Respondent Dr. Steiner would restate the issues on appeal as:

Did the Circuit Court properly grant summary judgment to Dr. Steiner on a claim that he committed medical malpractice by misdiagnosing and refusing to release Appellant during his initial assessment that was undertaken pursuant to a probate court order of detention?

I. Does the Supreme Court's holding in the prior appeal of Argoe v. Three Rivers Behavioral Health, L L.C., 392 S.C. 462, 710 S.E.2d 67 (2011), establish, as the law of the case, that the probate court commitment orders are valid and the commitment process was lawful, justified, and reasonable?

II. Is Dr. Steiner entitled to quasi-judicial immunity for any act or omission he performed within the scope of the valid order of detention?

III Did the Appellant present any expert testimony to support her contention that Dr. Steiner breached the standard of care during the limited time of her initial assessment pursuant to the valid order of detention?

Introduction

This case has a long and protracted history that started over nine years ago, in the summer of 2005, when the Appellant Martha Argoe was involuntarily committed to hospitalization for mental illness pursuant to a series of probate court orders under the statutory procedure found in S.C. Code Ann. § 44-17-410.[1] Notwithstanding that the Supreme Court already has held conclusively that the probate court orders are deemed valid, the Appellant still is attempting to pursue claims of medical malpractice against this Respondent, David A. Steiner, M D , a psychiatrist who performed only an initial assessment of the Appellant, as well as other mental health care providers, on a groundless theory that they misdiagnosed her and they should have released her because she did not have a mental disorder.

The Trial Court properly granted summary judgment to Respondent Dr Steiner, and this Court should affirm and finally put an end to the claims against him, on alternative grounds that. (1) the Supreme Court's prior holding that the probate orders are valid, and the commitment process was lawful, justified, and reasonable, is the law of the case and precludes the Appellant from asserting that Dr. Steiner committed medical malpractice in failing to release her, (2) Dr. Steiner is entitled to quasi-judicial immunity because his initial assessment was performed within the scope of the valid probate court order of detention; and (3) there is no expert testimony to support any contention that Dr

[1] Although the Supreme Court already has held that the commitment orders are valid, Section 44-17-410 is set forth verbatim in the Appendix at the end of the brief for ease of reference without a lengthy footnote here

Steiner breached any standard of care during the limited 26 ½ hours that the Appellant was arguably under his care at Aurora before being transferred to Three Rivers.

STATEMENT OF THE CASE[2]

Procedural History of the Underlying Probate Court Commitment Process

The underlying procedural history of the probate court process has been set forth and discussed in the Supreme Court opinions from the two prior appeals.[3] The following recitation is provided as necessary background for this appeal.

Appellant's husband,[4] George Argoe, Jr., filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005. [ROA ___; Application.] The Probate Court (Judge Pandora Jones-Glover) issued an Order of Detention that same day, which directed that the Appellant Martha Lewin Argoe be taken into custody for a period not to exceed 24 hours, during which time she was to be examined by a licensed physician. [ROA ___; Order of Detention.]

Pursuant to that Order of Detention, Appellant was transported by Orangeburg County Sheriff's deputies to the emergency room at The Regional Medical Center of Orangeburg on June 7, 2005. She was given a physical and mental evaluation at 3:35 pm and Dr. Glenn Hooker made a diagnosis of "Altered Mental Status." He discharged her

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[2] To the extent that the pertinent facts are part of the procedural history, no separate Statement of the Facts is necessary.

[3] Argoe v. Three Rivers Behavioral Ctr & Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (2010) [*Argoe I*]; Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 710 S E 2d 67 (2011) [*Argoe II*] These opinions can be found in the Record on Appeal at ____ and ____.]

[4] At the time in 2005, the Appellant had been married to G. Lewis Argoe, Jr., for 42 years. They had one child, George Lewis Argoe, III.

at 5.13 pm with instructions to return the following day for further evaluation. When she returned the next day, Dr. Hooker completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to § 44-17-410, which certified that inpatient psychiatric hospitalization was medically necessary, and she was admitted to the Aurora Pavilion Behavioral Health Services at Aiken Regional Medical Center on June 8, 2005, at 5:45 pm. [ROA ___, *Argoe II.* ROA ____, Certificate.]

Dr. Steiner, an attending physician at Aurora, conducted an initial assessment when she was admitted the evening of June 8th, but the Appellant was transferred to Three Rivers Behavioral Health the next day, on June 9, 2005, due to health insurance constraints. Dr. Steiner had no further involvement in her care. At Three Rivers, an initial psychiatric evaluation was conducted by Dr. Phyllis Bryan-Mobley, who made a provisional diagnosis of bipolar disorder with manic and psychotic features. On June 10, 2005, Three Rivers completed the Notification of Emergency Admission and Appointment of Designated Examiners. [ROA ___; *Argoe II.* ROA ___; Notification.]

On June 13, 2005, the Darlington County[5] Probate Court (Judge Marvin Lawson) issued an Order for Continued Hospitalization and for a Hearing to be held on June 21, 2005, finding "evidence that the [Appellant] is mentally ill and in need of emergency hospitalization. Based on that evidence I determine that there is probable cause to continue the emergency detention...." [ROA ___; Order.] By separate order, issued June 14, 2005, Judge Lawson appointed Respondents Dr. Bryant-Mobley and Doris Ann Burrell, RN, as designated examiners. [ROA ___; Order] Appellant was given notice of the hearing and counsel was appointed for her

[5] A change of venue had been made from Orangeburg County to Darlington County [See *Argoe II*, 710 S.E.2d at 70 fn. 4; ROA ___.]

At the June 21 hearing, the designated examiners presented their findings as to the Appellant's mental health The Appellant appeared and was represented by counsel. That same day, the Probate Court (Judge Lawson) issued an Order for continued treatment, finding that Appellant was mentally ill, and ordering that she be committed for inpatient care and treatment with mandatory outpatient treatment to follow at a county mental health facility for a period not to exceed 12 months [ROA ___; 6/21/05 Order.]

The Appellant did not timely challenge any of the commitment orders. *See* S.C. Code Ann. § 44-17-620 (15 days to appeal to circuit court).

After receiving treatment at Three Rivers, on July 20, 2005, the Appellant was discharged into the care of her son [*Argo II*, 710 S.E.2d at 70. ROA ___.]

Litigation Procedural History – Argoe I and Argoe II

Although the Appellant did not pursue any proper, timely challenge to the commitment proceedings, she later commenced a flood of litigation against her son, her husband, and their attorney, and against the hospitals, physicians, and nurses involved in the involuntary commitment proceedings, which amounts to an improper attack on the commitment proceedings. As a result of the Appellant's litigiousness, over the last eight years, this case has been through multiple proceedings in the probate court, the circuit court, and on appeal before the Supreme Court twice.

The Appellant initially filed a lawsuit in the Beaufort County Court of Common Pleas against her son, her husband, and their attorney, James F Walsh, Jr. alleging tortious conduct[6] in connection with the commitment proceedings in addition to claims

[6] The legal causes of action pled included professional negligence, breach of fiduciary duty, breach of trust, invasion of privacy, intentional infliction of emotional distress, violation of civil rights, conspiracy, conversion, and abuse of process. She also pled a

related to her son's transfer of title to certain real property under a power of attorney previously executed by Plaintiff appointing him as her attorney-in-fact.

Appellant also filed this action in Lexington County based on the same facts and circumstances but adding claims against additional defendants, including Dr. Steiner, Aiken Regional Medical Center[7], Aurora Pavilion, Three Rivers, Psychiatric Solutions, Inc.[8], Dr. Bryant–Mobley, Dr Hooker, Dr Dodds, Nurse Burrell, and Carolina Care Plan[9] The causes of actions alleged against Dr. Steiner, as well as the other Respondents, included false imprisonment, intentional infliction of emotional distress, defamation, conspiracy, abuse of process, invasion of privacy, public disclosure of private facts, and negligence [ROA ___; Complaint, filed June 6, 2007.][10]

Meanwhile, the Appellant was attempting to challenge the commitment orders in probate court. On March 25, 2008, Appellant filed a Petition to Vacate Commitment Proceedings in the Dorchester County Probate Court, asserting that her transport to Aurora on June 8th was improper because the June 6 Order of Detention was rendered invalid when she was discharged on June 7 [11] [ROA ___; Petition, 2006-GC-18-00053.] The Defendants in the civil cases, including Respondent Dr Steiner, intervened as parties in that probate proceeding The Probate Court (Judge Tiffany Provence) denied the

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claim in equity to set aside certain transactions conducted by her son using the power of attorney.

[7] Dismissed by consent order, filed July 9, 2013.

[8] Psychiatric Solutions had purchased Three Rivers after the times in issue,

[9] Appellant's healthcare insurer was dismissed by stipulation, filed October 2, 2013.

[10] The two actions ultimately were consolidated in Lexington County.

[11] The Appellant had previously filed, on August 14, 2006, a Motion To Vacate All Proceedings Ab Initio, To Disqualify Pandora Jones-Glover, Probate Judge, From Presiding Over Any Proceedings with Regards To These Proceedings, and For Related Relief [See ROA ___; Judge Provence's Order, p. 3 #(16)]

Petition, and the Appellant appealed to the Circuit Court where Judge Diane Goodstein affirmed the Probate Court order. [ROA ___, Order of Judge Provence, filed August 25, 2008. ROA ___; Order of Judge Goodstein –C/A # 2008-CP-18-2401, dated August 18, 2009, filed January 5, 2010] The Appellant did not appeal from Judge Goodstein's order.

In this action in Circuit Court, Dr. Steiner moved for summary judgment on all claims. [ROA ___; Motion, filed April 3, 2008.] As will be discussed in more detail below, the Trial Court (Judge John Milling) granted the motion, in part, on the false imprisonment claim, but denied the motion as to the medical malpractice claim. [ROA ___; Order, filed July 2, 2008.] Other Defendants also had filed motions for summary judgment, including Defendant Attorney Walsh and Respondent Psychiatric Solutions, whose motions were granted. While Appellant did not appeal from the Order granting partial summary judgment to Dr. Steiner, she did appeal from the orders as to Attorney Walsh and Psychiatric Solutions.

This case first came before the Supreme Court on appeal of Judge Milling's order granting summary judgment to Attorney Walsh. The Court affirmed, holding that there was no attorney-client relationship between the Plaintiff and the attorney, and thus he owed no duty of care to her. Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S C. 394, 697 S.E.2d 551 (2010) [*Argoe I*].

Meanwhile, Psychiatric Solutions moved for summary judgment on various grounds, including that the Plaintiff was precluded by the doctrine of res judicata from challenging the commitment orders, and thus Three Rivers was justified in relying on the probate court order. The Trial Court (Judge R Knox McMahon) granted the motion,

dismissing the claims for false imprisonment, intentional infliction of emotional distress, and defamation. On appeal, the Supreme Court held that: (1) the Appellant was precluded from collaterally attacking the original, underlying commitment orders because she did not timely appeal them under S.C. Code Ann. § 44-17-620, and (2) the doctrine of res judicata precluded her from asserting any challenge to the commitment orders because she did not appeal from Judge Goodstein's order. *Argoe II*, 710 S.E.2d at 72 [ROA ___] The Supreme Court also found that the involuntary commitment was factually substantiated by the court-appointed personnel *Id* at 73. Based on its finding that the underlying commitment orders were valid and she was lawfully taken into custody, the Court held that the Appellant could not maintain a claim of false imprisonment. The Court further held that the Appellant could not state a claim for intentional infliction of emotional distress because Three Rivers' conduct was reasonable and in accordance with the valid probate court orders, and that she could not state a claim for defamation because any communications by Three Rivers were done in effectuating the lawful probate order and thus privileged *Id.* at 74 In so holding the Court ultimately concluded that.

> Because Appellant failed to timely and properly challenge the probate court's orders, they are presumed valid. Based on these valid orders, we find that Respondent's [Three Rivers'] conduct toward Appellant was lawful, justified, and reasonable Thus, Appellant cannot maintain causes of action for false imprisonment, defamation, or intentional infliction of emotional distress against Respondent. *Id.* at 75

The Appealed Order Granting Summary Judgment on the Medical Malpractice Claims

As noted above, the Appellant originally asserted eight claims against Respondent Dr Steiner, for false imprisonment, intentional infliction of emotional distress, defamation, conspiracy, abuse of process, invasion of privacy, public disclosure of

private facts, and negligence/gross negligence. The Appellant dismissed six of the claims on the record at the motion hearing on May 29, 2008, leaving only the claims of negligence and false imprisonment The Trial Court (Judge Milling) denied the motion as to the negligence claim, but granted summary judgment on the false imprisonment claim [ROA ___, Order, filed July 2, 2008, p. 3-4.] On the false imprisonment claim, the Trial Court held that Dr. Steiner's conduct, as taken pursuant to a lawful probate court order, was lawful as a matter of law. And, while the Trial Court appeared to find merit to the Defendant's argument that the Plaintiff's expert affidavit was not sufficient to avoid summary judgment,[12] he was "disinclined" to grant summary judgment until after the expert was deposed. The Trial Court specifically stated that the Defendant could renew the motion at a later date. [ROA ___, 7/2/08 J Milling Order, p. 7] Appellant did not appeal from that order in 2008, nor has she appealed from that order in this appeal. [See ROA ___; Notice of Appeal]

Following the Supreme Court's decision in *Argoe II*, the Appellant was allowed to amend her Complaint to state a medical negligence cause of action against all the

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[12] Appellant's Expert Affidavit by Dr. Davis opined, relative to Dr. Steiner, that.

> Based upon what appears to be a very limited evaluation, it does not appear that there is a sufficient record to justify the interim opinions issued from Aurora Pavilion and Dr. David Steiner that Mrs. Argoe suffered from bipolar disorder.
>
> ****
>
> At the time of my psychiatric evaluation of Mrs. Argoe, I saw no evidence of her having any condition that is appropriately treatable with medication or an inpatient setting
>
> ****
>
> I can find no justification in the records for . Mrs. Argoe being an inpatient for forty-one (41) days..

[ROA ___, Davis Affidavit, dated 5/6/08.]

Respondents. [ROA ___; Second Amended Complaint, dated January 6, 2012] As to Respondent Dr. Steiner, she alleged that·

> ¶ 28 Defendant Steiner did not perform an adequate or competent assessment of the Plaintiff and had Defendant Steiner performed an adequate and competent examination, he would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.
>
> ¶ 29. Because of Hooker and Steiner's inadequate, incomplete and incompetent evaluations of the Plaintiff, the Plaintiff was subjected to involuntary inpatient psychiatric hospitalization at Aurora that was not medically necessary or medically warranted.

[ROA ___.] Dr. Steiner filed an Answer to the amended complaint. [ROA ___, Answer, served January 23, 2012.] After discovery was conducted, including deposing the Appellant's expert(s), Dr. Steiner renewed his motion for summary judgment on the medical malpractice claim. [ROA ___; Motion, filed 1/4/13.] The Trial Court (Judge William Keesley) granted summary judgment to Dr. Steiner, based on (1) the binding, preclusive effect of the Supreme Court's decision in *Argoe II*, (2) quasi-judicial immunity for acts in compliance with the probate orders, and (3) the absence of expert evidence that Dr. Steiner breached any standard of care in any other respect apart from his brief initial assessment within the scope of the valid commitment order. [ROA ___, Order, filed March 21, 2014.][13]

The Appellant moved for reconsideration which was denied. [ROA ___; Motion, served April 7, 2014. ROA ___, Order, filed June 9, 2014.] The Appellant served and filed a Notice of Appeal from Judge Keesley's orders filed March 21, 2014, and June 9, 2014. [ROA ___, Notice of Appeal.]

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[13] The Trial Court also granted partial summary judgment to the other Respondents This Statement of the Case is not comprehensive as to the other Respondents which will be covered in their own briefs.

ARGUMENT

THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO DR. STEINER ON THE CLAIM THAT HE COMMITTED MEDICAL MALPRACTICE DURING HIS INITIAL ASSESSMENT OF THE APPELLANT BY MISDIAGNOSING HER AND REFUSING TO RELEASE HER FROM THE INVOLUNTARY COMMITMENT ORDERED BY THE PROBATE COURT.

I. The Supreme Court's binding holding in *Argoe II* establishes that the probate court commitment orders were valid and bars any claim that challenges the lawfulness of the commitment process.

In granting summary judgment on the Appellant's remaining claim against Dr. Steiner, the Trial Court applied the preclusive doctrines of law of the case and *res judicata* to the Supreme Court's holdings in *Argoe II* that the commitment orders were valid, and the commitment process was lawful, justified and reasonable. Appellant argues that *res judicata* does not bar her claims against Dr. Steiner because she has never litigated medical malpractice claims against him or any other party. However, the Appellant miscomprehends the Trial Court's holding and the underlying legal doctrines of claim/issue preclusion and law of the case as they apply in this case

There are several levels of preclusion under different doctrines which support the grant of summary judgment in favor of Dr Steiner – law of the case, *res judicata* and/or collateral estoppel The crux of the matter is that the Supreme Court's holdings in *Argoe II* are binding and preclude the claim the Appellant is attempting to assert. For, while she has restyled her claim as one of medical malpractice, the Appellant still is alleging that Dr. Steiner should have released her, which ultimately is nothing more than another challenge to the commitment process.

A. Preclusion Doctrines - Generally

There are a number of various doctrines and legal principles which preclude litigants from presenting claims or disputing factual findings or challenging prior court rulings, which include *res judicata*, collateral estoppel, and law of the case.

The doctrine of *res judicata*, also referred to as claim preclusion, bars a subsequent suit by the same parties on the same issues. The doctrine is applied upon a showing that. "(1) the identities of the parties is the same as a prior litigation, (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction " Garris v. Governing Bd of S. Carolina Reinsurance Facility, 333 S C. 432, 511 S.E.2d 48, 57 (1998). A litigant is barred from pursuing a later suit where the claim was litigated or could have been litigated.

Catawba Indian Nation v. State, 407 S.C. 526, 756 S E.2d 900, 906 (2014) (citation omitted).

The doctrine of collateral estoppel, known as issue preclusion, is a distinguishable concept *Id* Under the doctrine of collateral estoppel, "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim " *Id* (citations omitted); *see also* Holmes v. E. Cooper Cmty. Hosp , Inc., 408 S C. 138, 758 S.E.2d 483, 493 (2014)

"As distinguished from issue preclusion and claim preclusion, the doctrine of law of the case addresses the potentially preclusive effect of judicial determinations made in the course of a single litigation before a final judgment." 20 Am. Jur. 2d *Courts* § 130.

As applied in one respect, an appellate court's decision becomes the law of the case in any further proceedings

> It is well settled that an undisturbed finding of this court contained within a decision in a previous appeal of the same case is the law of the case.

Huggins v. Winn-Dixie Greenville, Inc., 252 S C. 353, 166 S.E.2d 297 (1969); *see also* Sloan Const Co. v. SouthCo Grassing, Inc., 395 S.C. 164, 169-70, 717 S.E 2d 603, 606 (2011). "Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form." Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct.App.1996). Similarly, a trial court decision becomes the law of the case if it is not appealed:

> Under the law of the case doctrine, a party is precluded from re-litigating issues decided in a lower court order, when the party voluntarily abandons its appeal of that order.

Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009); *see also* Hudson v. Lancaster Convalescent Ctr., 407 S.C. 112, 119-20, 754 S.E.2d 486, 490 (2014).

As long stated by the Courts, the primary purposes of claim preclusion are to bring an end to litigation and prevent a defendant from being forced to defend the same action repeatedly, while the doctrine of issue preclusion, on the other hand, rests generally on equitable principles Watson v Goldsmith, 205 S.C. 215, 31 S.E 2d 317 (1944); *see also* S. Carolina Pub. Interest Found. v. Greenville Cnty., 401 S.C. 377, 386, 737 S.E 2d 502, 507 (Ct. App. 2013). Similarly, the law of the case doctrine promotes the finality of litigation and efficiency of the judicial process and also operates: "(1) to protect the settled expectations of the parties, (2) to insure uniformity of decisions; and (3) to maintain consistency during the course of a single case." 5 Am. Jur. 2d *Appellate Review* § 566; *see* Cato v Atlanta & C A L Ry. Co., 164 S C. 123, 162 S.E 239, 252

(1931) (applying the elementary rule that conclusions announced on a former appeal will not be disturbed and discussing unfairness to litigants, judges, and lawyers if holding on appeal was not followed after remand).

B. Preclusion as it Applies in this Case

In *Argoe II*, the Supreme Court applied appeal preservation rules and the doctrine of *res judicata* to the various probate court rulings, in holding that the Appellant is precluded from collaterally attacking or otherwise challenging the underlying commitment orders because she failed to timely appeal directly from them in 2005 and then she failed to appeal from Judge Goodstein's order denying the belated petition to vacate the commitment proceedings in 2010:

> Accordingly, we find Appellant was precluded from collaterally attacking the underlying commitment orders *See In re Webber,* 201 N C App. 212, 689 S.E.2d 468 (2009) (recognizing that failure to timely appeal involuntary civil commitment order precluded collateral attack on alleged erroneous underlying order), *cert denied,* 364 N.C. 241, 699 S.E.2d 925 (2010).
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> ***
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> Because Judge Goodstein's order constitutes a final adjudication regarding the validity of the commitment proceedings, the doctrine of *res judicata* precludes Appellant from asserting any challenge to the commitment orders. *See Riedman Corp v Greenville Steel Structures, Inc* , 308 S C. 467, 419 S.E 2d 217 (1992) (recognizing that in order to bar subsequent lawsuit based on *res judicata,* the following elements must be proven: (1) identity of the parties; (2) identity of the subject matter, and (3) adjudication of the issue in the former suit)

710 S.E 2d at 72 (footnotes omitted). In its Conclusion, the Supreme Court clearly and definitively held and found·

> Because Appellant failed to timely and properly challenge the probate court's orders, they are presumed valid. Based on these orders, we find that Respondent's conduct towards Appellant was lawful, justified, and reasonable. *Id* at 75.

Judge Keesley properly recognized that the Supreme Court's rulings in *Argoe II* are binding and preclusive as to the Appellant's remaining claims because regardless of her attempt to state a claim for medical negligence, she still is challenging her commitment at Aurora– not any treatment by Dr. Steiner.

> This court is not able to reconcile the rulings of the Supreme Court in Argoe II with the assertions that the involuntarily commitment and treatment of Ms. Argoe by Dr. Steiner constituted medical malpractice. The court accepts the argument of the Defendant that he is entitled to a determination that it is *res judicata* and the law of this case that the commitment process was 'lawful, justified and reasonable.' In the court's view the elements of res judicata are satisfied in this medical malpractice case. [ROA ___, 3/21/14 Order, p. 7]

The Appellant argues that the Trial Court erred in applying *res judicata* because she has never litigated any causes of action for medical malpractice against any Defendant in the prior appeals of *Argoe I* or *Argoe II.* However, as a preliminary point, the appeal in *Argoe I* dealt with issues involving the Attorney and the Trial Court did not rely upon that decision in granting summary judgment on the medical malpractice claim. As to *Argoe II*, the Appellant argues that identity of the parties are not the same and the subject matter is not the same because *Argoe II* involved claims of false imprisonment, defamation, and intentional infliction of emotional distress against a different party.

While Dr. Steiner was not a party to the appeal in *Argoe II* and there was not a medical malpractice claim at bar in that appeal, the pertinent point is that Appellant's claims rely upon the same set of facts revolving around the commitment process and Dr. Steiner, as well as all the Defendants, are entitled to rely on the Supreme Court's holding as to the validity of the probate orders and the lawfulness of the commitment. *See* Yelsen Land Co. v. State, 397 S C 15, 22, 723 S E.2d 592, 596 (2012)("For purpose of *res judicata*, however, the concept of privity rests not on the relationship between the parties

asserting it, but rather on each party's relationship to the subject matter of the litigation."). In addition, Dr. Steiner was a party (as an intervener) to the proceedings in the Probate Court wherein Judge Provence and Judge Goodstein held that the commitment orders are deemed valid and cannot be challenged.

Most significantly, the Trial Court's application of *res judicata* is fully supported by the Supreme Court's application of *res judicata* in its decision in *Argoe II* – as binding precedent and law of the case. There, the Supreme Court held that "Judge Goodstein's order [on the petition to vacate the commitment proceedings] constitutes a final adjudication regarding the validity of the commitment proceedings, the doctrine of *res judicata* precludes Appellant from asserting any challenge to the commitment orders." 710 S.E.2d at 72. By the same analysis, to the extent that the Supreme Court already has decreed that Judge Goodstein's order constitutes a final adjudication regarding the validity of the commitment proceedings, the doctrine of *res judicata* precludes the Appellant from asserting any claim against Dr. Steiner – however it is denominated – that directly or indirectly challenges the commitment order.

Alternatively, the related doctrine of collateral estoppel applies "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or ***a different claim."*** Catawba Indian Nation, 756 S E.2d at 906 Accordingly, the validity of the commitment proceedings – as a matter of law – has been litigated and determined by Judge Provence's order as affirmed by Judge Goodstein and conclusively establishes – as a matter of fact –

that Appellant's commitment at Aurora for those few 26 ½ hours was medically necessary.

In addition, the application of *res judicata* and/or collateral estoppel is the law of the case as it specifically applies to Dr Steiner because the Appellant has not appealed from Judge Milling's order of July 2, 2008, on the prior motion for summary judgment. In that order, Judge Milling specifically held that: "Plaintiff is now barred by the doctrines of res judicata as well as collateral estoppel from arguing that the June 6, 2005 commitment order was improper or that ARMC [Aiken Regional] or Dr Steiner were not justified in relying on the validity of the Order." [ROA ___; J Milling Order, p 4.] Appellant did not file an appeal in 2008, nor does she challenge that order in this appeal. Accordingly, Judge Milling's holding is the law of the case

****

Appellant has steadfastly maintained that the validity of the probate court commitment orders is "a red herring," that is irrelevant to her medical malpractice claims because "once [she] was involuntarily committed it was a medical psychiatric decision that the doctors and nurses had to make as to when to release her." [ROA ___; 8/29/13 Tr. 10-11.] Whatever the Appellant's claim may be – false imprisonment or medical malpractice – any issue that concerns when Dr. Steiner should have released her is controlled by the probate court commitment orders which establish – beyond any permissible challenge – that she was mentally ill and in need of inpatient hospitalization through at least June 21, 2005. Based on those conclusive findings, the Trial Court properly granted summary judgment to Dr. Steiner on the medical malpractice claim.

It is time for the Court to put an end to this litigation by affirming the judgment in favor of Dr Steiner. He should not be forced to continue defending against claims that he improperly detained the Appellant, and, the court system should not be put to the time and expense of the judicial resources incurred by the Appellant's continued attempts to complain about her commitment. Her time to make any challenge passed long ago when she did not appeal from the probate court orders in 2005.

II. Dr. Steiner is entitled to quasi-judicial immunity because he acted within the scope of the valid order of detention.

The Trial Court properly granted summary judgment to Dr Steiner on an additional ground that he was entitled to quasi-judicial immunity under Vaughan v. McLeod Reg'l Med Ctr., 372 S C. 505, 642 S.E.2d 744 (2007), stating:

> The only evidence in this record is that all of Dr. Steiner's actions were undertaken pursuant to the Order [of Detention] He did not have the option to disregard the Order of the Probate Court. ...

[ROA ___; 3/21/14 Order, p. 8.] The Appellant argues that ruling is in error because Dr. Steiner was under no legal obligation to hold her and he had complete legal authority to release her: "[O]nce Ms. Argoe was involuntarily committed it was a medical psychiatric decision that the doctors and nurses had to make as to when to release her." [ROA ___; 8/29/13 Tr. 10-11] That contention is untenable, if not purely absurd in the face of the applicable probate statutes and the specific probate orders issued in her case.

To briefly recap the commitment proceedings set forth above, Husband filed an application for involuntary commitment on June 6, 2005, and the Orangeburg County Probate Judge issued an Order of Detention that same day. Pursuant to that Order of Detention, the Appellant was transported to the emergency room of The Regional Medical Center of Orangeburg on June 7, 2005, where she was given a physical and

mental evaluation by Dr. Hooker and discharged two hours later with instructions to return the following day for further evaluation. The next day Appellant returned and Dr. Hooker completed documentation that certified that inpatient psychiatric hospitalization was medically necessary. Thereupon, the Appellant was involuntarily committed to Aurora Pavilion at Aiken Regional Medical Center on June 8, 2014, at 5:45pm. Dr. Steiner made an initial assessment, but due to insurance constraints, the Appellant was transferred to Three Rivers the next day During the 26 ½ hours that Appellant was at Aurora, she was not administered any medications, nor did she receive any therapeutic treatment. The extent of Dr. Steiner's interaction with the Appellant was the initial assessment in compliance with the Order of Detention and Dr. Hooker's certification. After Appellant's admission to Three Rivers, Darlington County Probate Court Judge Lawson issued an Order for Continued Hospitalization on June 13, 2005. A hearing was held on June 21, and Judge Lawson issued an Order for Continued Treatment

Appellant argues that the Order of Detention did not mandate that Dr Steiner hold her However, while that Order does not expressly direct that Dr. Steiner hold the Appellant, the order does recite the applicable provision of §44-17-430 that allowed for her release only if she was not examined by a licensed physician within 24 hours, or if the licensed physician did not execute a certification for emergency admission. [ROA ___; Order of Detention.] When Dr. Hooker examined her and executed the requisite certification, commitment was mandated, and, by law, she could not be released until the probate court made a probable cause finding.

> If the court finds that probable cause does not exist, it shall issue an order of release for the patient. Upon a finding of probable cause, the court shall make a written order detailing its findings and may order the continued detention of the patient S.C. Code Ann. §44-17-410

Probate Judge Lawson, by the June 13, 2005, Order for ***Continued*** Hospitalization, expressly confirmed that there was probable cause to continue the emergency detention Notably, that form order [SCDMH Form M-133] contains an optional "Order for Release Based On No Probable Cause for Emergency Admission" that would have been required for her release. [ROA ___; 6/13/05 Order.] Upon the full hearing on June 21, 2005, Judge Lawson ultimately found that Appellant was mentally ill and ordered her to remain in inpatient care and treatment. This commitment process conclusively establishes that Appellant could not have been released at any point from her admission on June 8 until at least June 21, and certainly not during the limited time she was at Aurora under Dr. Steiner's care on June 8 and 9.

In support of her argument that the decision to keep Appellant was a clinical, medical decision made by Dr. Steiner, the Appellant also relies upon the opinion of her expert that Dr. Steiner was free to release her.

Q: Okay. Now, you agree with me that Dr. Steiner did not have the ability to release Ms Argoe at the time that he saw her, correct?

A: He did not?

Q: He did not have or do you have an opinion that he did?

A: I don't know why he couldn't have.

Q: Do you have any knowledge of the commitment proceedings ~ commitment procedures in South Carolina?

A· Some.

Q. And based on that knowledge, you believe that Mr. Steiner could have released Ms. Argoe at the time that he saw her?

A. I don't understand why not.

Q: If there's a requirement that she be held for a certain period until a hearing is conducted.

A: My understanding is any time you think someone doesn't meet the criteria, you can release them

[Appellant's Brief, p. 21, citing Davis Deposition, p. 23 - line 13- p 24 – line 7. See ROA ___-____.]

First, Dr. Davis' quoted testimony shows that his opinion was, at best, equivocal and he ultimately admitted that he does not know the law in South Carolina:

> Q. If the legal procedure did not allow for Dr. Steiner to release Ms. Argoe, then would you agree with me that Dr. Steiner didn't cause Ms. Argoe any harm?
>
> A. I think he would have -- ***I don't know that the legal procedure*** didn't and I don't understand why a doctor who doesn't think somebody needs to be in a psychiatric hospital can't make that statement. So, you know, ***I don't know exactly know how it works in South Carolina.*** ...

[ROA ___; Davis Dep. p. 36, ll 16-25 (emphasis added).]

Second, but more importantly, Dr. Davis is offering an opinion on a matter of law – not medical science "In general, expert testimony on issues of law is inadmissible." Dawkins v. Fields, 354 S.C. 58, 66, 580 S E 2d 433, 437 (2003); Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 207, 662 S.E 2d 444, 450 (Ct. App. 2008). The Supreme Court already held in *Argoe II* that the probate court orders are valid and the commitment process was lawful, and Judge Milling previously held -- specifically as to the false imprisonment claim against Dr. Steiner – that she was lawfully detained at Aurora. As to that issue of law, these Court decisions are binding as fully discussed above.

III. The Plaintiff did not present any expert testimony to support her contention that Dr. Steiner breached the standard of care during the limited time of her initial assessment pursuant to the valid order of detention.

Finally, the Trial Court granted summary judgment because the Plaintiff did not present any relevant expert testimony that Dr. Steiner deviated from any applicable standard of medical psychiatric care. In so holding, Judge Keesley noted that. "Plaintiff's expert admitted in this deposition that he could not find fault for a period of

a couple of days for the initial observation and investigation of the Plaintiff and the allegations that her family made." [ROA ___; 3/21/14 Order, p. 10.]

The Appellant complains that the expert's opinion about "a couple of days", referred to his opinion of Dr. Dodds' evaluation at Three Rivers However, the expert's testimony does apply to Dr Steiner because he testified that he would give a reasonable, competent psychiatrist one or two days to determine if she was not mentally ill and needed to be discharged·

> A. Yes, but I don't -- I'm not going to criticize Dr. Dodds' first day that she saw her. You know, I'll give her a day or two. Okay. Because she's coming on duty here, the first look is probably going to be why is this woman in the hospital. But maybe she's just having a great day or something I'll see how she is tomorrow. But within one or two days, I don't know why she didn't let her go.
>
> Q So you'll give a reasonable, competent psychiatrist one or two days to determine --
>
> A. Yeah.
>
> Q. -- that she is not mentally ill and needs to be discharged.
>
> A. Well, in this particular situation, yeah Right

[ROA ___; Davis Dep. p. 146, ll. 5-19]

The Appellant's expert testified that his only criticism of Dr Steiner was that "he should have released Martha Argoe the first time he saw her"·

> Q. Okay Do you have any other criticisms of Dr. Steiner other than the fact that he should have released Martha Argoe the first time he saw her?
>
> A. No. [ROA ___; Davis Dep. p. 32 , ll. 4-7.]

The expert's opinion as to Dr. Steiner is not founded on the facts of record or the law of this case.

The expert's testimony reveals that not only did he not understand the commitment process under South Carolina law, he did not understand Dr. Steiner's role in the commitment process·

Q How would you characterize Dr. Steiner's role?

A. Well, I think first she saw Dr Hooker and was, you know, at the hospital, then released and then came to Aurora and Dr. Steiner then did an evaluation on her and signed the paper [ROA ___; Davis Dep. p. 23, ll. 7-12.]

****

Q. Okay So your opinion in this case related to Dr. Steiner is -- tell me all the criticisms that you have of Dr Steiner related to Ms. Argoe and then I'll ask you my follow-up questions.

A. I don't think he did a proper assessment of her to hold her against her will.

Q. Okay. What do you think a proper assessment requires that Dr. Steiner did not do?

A. An in-depth evaluation of that individual at the time to determine that the person is either dangerous or so unable to take care of themselves that -- a person first has to be mentally ill to hold them. And then if they're mentally ill and dangerous or so psychotic or ill that they can't take care of themselves, then you can hold them. [ROA ___; Davis Dep. p 24, ll. 8 – 23.]

*****

Q. So what, in your opinion, is lacking from the assessment that Dr. Steiner did?

A He's got to do his own assessment [ROA ___; Davis Dep. p. 28, ll. 14-16]

****

Q. .... is it your testimony to the jury that he should have released her after his initial impressions?

A. Absolutely.

Q. What do you base that opinion on?

A His examination of her shows no mental illness [ROA ___; Davis Dep p. 31, ll. 5-10]

****

Q. (By Ms. Ganes) Now, do you have any opinions about whether the actual clinical services provided to Ms. Argoe by Dr. Steiner were appropriate?

A. Well, the assessment and transfer is a clinical service, so, you know, I already don't think that's appropriate at all. [ROA ___; Davis Dep. p. 35, ll 19-24]

The undisputed facts are that Dr. Steiner DID NOT prepare the certification that precipitated the Appellant's inpatient psychiatric hospitalization -- Dr. Hooker was the "licensed physician" that performed the examination and completed the Certificate on June 8, 2005, that directed she be transported to Aurora for involuntary emergency admission. Dr. Steiner DID authorize her admission to Aurora – but only pursuant to Dr. Hooker's certification on the Order of Detention. He DID NOT treat her, he only made an initial assessment and prescribed medication -- but she refused to take it. Dr. Steiner DID NOT make a medical decision to transfer her to Three Rivers – that decision was made for insurance reasons. Accordingly, without a well-founded expert opinion that Dr Steiner breached any standard of care in treating the Appellant, the Trial Court properly granted summary judgment to Dr Steiner. David v. McLeod Reg'l Med Ctr, 367 S C 242, 250, 626 S E.2d 1, 5 (2006) ("summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner")

CONCLUSION

The basic uncontested facts are that the Appellant was lawfully committed to inpatient hospitalization for 42 days beginning with her admission to Aurora on June 8, 2005, through her transfer to Three Rivers on June 9, and ending with release on July 20, 2005. Dr. Steiner's involvement in the commitment was limited to his initial assessment when she was at Aurora for 26 ½ hours on June 8-9, 2005.

After the voluntary dismissal of most of her claims, the Appellant attempted to pursue claims against Dr Steiner for false imprisonment and medical malpractice, but Dr. Steiner has been granted summary judgment on both. While the Appellant has not noticed an appeal from the dismissal of the false imprisonment claim, she still is pursuing her medical malpractice claim based on her expert's opinion that she was not mentally ill and Dr. Steiner should have released her the first time he saw her.

The Trial Court properly granted summary judgment because the Probate Court found that the Appellant was mentally ill and ordered her commitment, and the Supreme Court already has held that those probate court orders are deemed valid and thus, the commitment process was lawful. Accordingly, the Appellant is precluded from maintaining any claim based on the fact that Dr. Steiner did not release her during his initial assessment on June 8-9, 2005.

WHEREFORE, based on the foregoing, the Respondent Dr. Steiner respectfully requests that the Court affirm the Trial Court's judgment.

Respectfully submitted,

Hood Law Firm, LLC

Elloree A. Ganes, S.C.No.70509
Deborah H. Sheffield, *Of Counsel,* S.C. No. 2757
P.O. Box 1508
Charleston, SC 29402
(843) 577-4435
Attorneys for Respondent
David A. Steiner, M.D.

January 30, 2015

Appendix

§ 44-17-410. Emergency admission of person likely to cause serious harm; procedures; court review; assessment by examiners; initiation of emergency commitment procedures; hearing; right to counsel.

A person may be admitted to a public or private hospital, mental health clinic, or mental health facility for emergency admission upon:

(1) written affidavit under oath by a person stating.

(a) a belief that the person is mentally ill and because of this condition is likely to cause serious harm to himself or others if not immediately hospitalized,

(b) the specific type of serious harm thought probable if the person is not immediately hospitalized and the factual basis for this belief;

(2) a certification in triplicate by at least one licensed physician stating that the physician has examined the person and is of the opinion that the person is mentally ill and because of this condition is likely to cause harm to himself through neglect, inability to care for himself, or personal injury, or otherwise, or to others if not immediately hospitalized. The certification must contain the grounds for the opinion. A person for whom a certificate has been issued may not be admitted on the basis of that certificate after the expiration of three calendar days after the date of the examination;

(3) within forty-eight hours after admission, exclusive of Saturdays, Sundays, and legal holidays, the place of admission shall forward the affidavit and certification to the probate court of the county in which the person resides or, in extenuating circumstances, where the acts or conduct leading to the hospitalization occurred

Within forty-eight hours of receipt of the affidavit and certification exclusive of Saturdays, Sundays, and legal holidays, the court shall conduct preliminary review of all the evidence to determine if probable cause exists to continue emergency detention of the patient. If the court finds that probable cause does not exist, it shall issue an order of release for the patient. Upon a finding of probable cause, the court shall make a written order detailing its findings and may order the continued detention of the patient

With each affidavit and certification, the treatment facility shall provide the court with a designated examiner appointment form listing the names of two designated examiners at the treatment facility.

If the court appoints these two designated examiners, the examination must be performed at the treatment facility and a report must be submitted to the court within seven days from the date of admission. The court may appoint independent designated examiners

who shall submit a report to the court within the time allotted above. In the process of examination by the designated examiners, previous hospitalization records must be considered. At least one of the examiners appointed by the court must be a licensed physician. The examiners' reports must include the grounds for the examiners' conclusions.

If the report of the designated examiners is that the patient is not mentally ill to the extent that involuntary treatment is required and reasons have been set forth in the report, the court shall dismiss the petition and the patient must be discharged immediately by the facility unless the designated examiners report that the patient is a chemically dependent person in need of emergency commitment and that procedures have been initiated pursuant to Section 44-52-50. In which case, emergency commitment procedures must be complied with in accordance with Chapter 52, and the facility shall transfer the patient to an appropriate treatment facility as defined by Section 44-52-10, provided that confirmation has been obtained from the facility that a bed is available; transportation must be provided by the department

If the report of the designated examiners is that the patient is mentally ill and involuntary treatment is required, the court may order that the person be detained, appoint counsel for the patient if counsel has not been retained, and fix a date for a full hearing to be held pursuant to Section 44-17-570 within fifteen days from the date of admission. The court shall give notice of the hearing pursuant to Section 44-17-420.

The examiners' report must be available to the person's counsel before the full hearing The person must be given the opportunity to request an independent designated examiner pursuant to Section 44-17-530

If before the hearing, the designated examiners determine that the patient is no longer mentally ill to the extent that involuntary treatment is required, they shall cause a supplemental report to be submitted to the court. If the court receives a supplemental report at least forty-eight hours before the hearing stating that the patient is no longer mentally ill to the extent involuntary treatment is required, and setting forth the reasons for the examiners' conclusions, the court shall dismiss the petition and the patient must be discharged immediately by the facility.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
Court of Common Pleas

Honorable William P. Keesley, Circuit Court Judge

C.A. No. 2007-CP-32-1981
App. No. 2014-001511

Martha Lewin Argoe,

Appellant,

v.

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor; Phyllis Bryant-Mobley, MD; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN and the Carolina Care Plan,

Respondents.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 30th day of January 2015 a copy of the Initial Brief of Respondent David A Steiner, M.D. and his Designation of Matter to Be Included in the Record on Appeal were served by depositing said copy in the U.S. Mail, with sufficient first class postage, on the following counsel at the addresses listed below:

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, SC 29201
Counsel for Appellant

James E. Parham, Jr., Esquire
PO Box 1576
Irrmo, SC 29063
Counsel for Cheryl C. Dodds, MD

Andrew N. Cole, Esquire
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211
Counsel for Three Rivers Behavioral Health, LLC and Doris Ann Burrell, RN

William H. Davidson, II, Esquire
Andrew Lindemann, Esquire
Davidson Morrison & Lindemann, PA
PO Box 8568
Columbia, SC 29204-2442
Counsel for Phyllis Bryan-Mobley, MD