

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2007-CP-00-01981

Martha Lewin Argoe,

v. Appellant,

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

Respondent,

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. Dodds' attempts to minimize the importance and significance of the lower court's orders are misleading because the lower court's orders cripple Ms. Argoe in pursuing the remainder of her case in the lower court.

In her Brief, Dodds attempts to dismiss the importance and significance of the lower court granting partial summary judgment by writing "it is unclear what there is for Argoe to appeal with respect to Dr. Dodds." Initial Respondent's Brief of Cheryl C. Dodds, MD, p. 5. What there is to appeal and why this appeal is important to Ms. Argoe is because the combined orders of the lower court effectively gut the bulk of her claims against Dodds and the other Respondents.

To be clear, Ms. Argoe's claims against all the Respondents is that she was not mentally ill at any point in time and that she was never a danger to herself or others. Ms. Argoe maintains that the standard of care for psychiatrists in the treatment of involuntarily committed patients is to properly evaluate those patients and to release those patients once they are no longer a danger to themselves or other people. She maintains that all of the Respondents failed to properly assess her and diagnose her and as a result she was involuntarily committed beyond what was reasonable or medically necessary. Ms. Argoe has offered multiple expert witnesses who support her claims, and even one of the defense experts has concurred that the decision as to when to release a patient from involuntary commitment is a medical, clinical decision. Deposition of Dave Davis, pp. 23, 75, 96, and 99 and Deposition of Donna Marie Schwartz-Watts, M.D. pp. 21-22 and 69-71. With respect to Dodds specifically, Dodds first saw Ms. Argoe at the end of June, 2005. Deposition of Cheryl C. Dodds, p. 18. At that time, Dodds, like the doctors who went before her, was free to release Ms. Argoe at any time she believed Ms.

Argoe was not a danger to herself or other people. But Dodds failed to do so because she failed to properly evaluate and diagnose Ms. Argoe.

With the respect to the summary judgment motions at issue, Ms. Argoe's position has been equally clear: The decision to release Ms. Argoe was a clinical, medical decision made by physicians. The fact that the judicial system crossed paths in some way did not relieve Respondents of providing proper medical care and treatment when the judiciary played absolutely no role whatsoever in when to release Ms. Argoe.

The significance of the lower court's ruling is that it effectively cripples Ms. Argoe in prosecuting her case because the orders strip away her rights to pursue damages and injuries she sustained when Dodds and the other Respondents detained her beyond what was medically necessary.

II. Appellant has properly preserved her appeal as it pertains to the lower court's ruling on *res judicata* and the law of the case doctrine and Mobley's arguments to the contrary lack a basis in the Record on Appeal.

In her brief, Mobley asserts that Appellant "raises no exception to [the lower court's] reliance on the law of the case doctrine, and for that reason, this issue fails by application of the 'two-issue' rule." Initial Brief of Respondent Phyllis Bryant-Mobley, M.D., p. 8. Mobley's argument is off base and lacks merit for multiple reasons.

As an initial matter, it should be noted that none of the other Respondents to this appeal have made such a claim. This is likely because Appellant has specifically appealed the lower court order's granting summary judgment to Respondents on the ground that her claims are barred by the Supreme Court's opinions in Argoe I and Argoe II. In the lower court, Respondents each addressed the issue of whether Appellant's claims were barred by Argoe I and/or Argoe II under the doctrine of *res judicata* and/or the law of the case doctrine, as a single

legal issue. Moreover, the lower court's orders address this issue in the same way: as a single legal issue. Accordingly, in her Initial Brief, Appellant addressed the issue as it had always been addressed: as a single issue; that issue being whether the Supreme Court's Orders in Argoe I and/or Argoe II preclude her from maintaining her current actions against different Defendants on different causes of action than those addressed or litigated before the Supreme Court in Argoe I and Argoe II.

On this issue, Appellant took exception to the lower court's order granting Respondent's summary judgment. Simply put, neither the doctrines of *res judicata* nor the law of the case doctrine (whether treated together or separately) bar her current claims against these Respondents. On this point, Appellant could not have been more clear and she has properly preserved the issue for appeal.

III. Three Rivers' claim that it did not provide medical treatment to Appellant is wrong and factually inaccurate because it did provide treatment to Appellant and it may be held liable under the doctrine of *respondeat superior* for the treatment it provided.

In its Brief, Three Rivers claims it "did not provide treatment to Appellant, it was merely the facility where Appellant's physicians directed the care and treatment of their patient." Initial Brief of Respondents Three Rivers Behavioral Health, LLC, and Doris Ann Burrell, RN, p. 13. This statement is untrue. In fact, Three Rivers had a medical doctor who provided actual care and treatment to Appellant on the weekends and during holidays when the Respondents did not see her. Deposition of Phyllis M. Mobley, M.D. p. 79 and 86. During those times, Frank Heath saw Ms. Argoe and as a treating medical doctor he had the full authority and legal duty to treat her appropriately and within the standard of care. But like the Respondents, his care and treatment fell well below accepted standards of care for treating psychiatrists.

In footnote 8 of its Brief, Three Rivers goes further and makes the legally erroneous argument that Ms. Argoe cannot maintain a claim against it based on the action and inaction of Dr. Heath because she did sue Dr. Heath individually. The error in this argument is that Ms. Argoe need not sue Dr. Heath individually in order to maintain a respondeat superior against Three Rivers, his employer, who she did sue. There is simply no legal precedent in South Carolina or elsewhere to suggest that a plaintiff must sue an individual employee in order to maintain a legal action against the employer on a *respondeat superior* or other vicarious liability theory.

Finally, Three Rivers claims this issue was not preserved for appeal because it “was never properly raised or ruled on by the Circuit Court.” Initial Brief of Respondents Three Rivers Behavioral Health, LLC, and Doris Ann Burrell, RN, p. 13, footnote 8. This argument lacks merit because Three Rivers never moved for summary judgment on this ground and the lower court never granted summary on that ground.

CONCLUSION

For the reasons outlined above and as more fully explained in Appellant’s Brief, this Court should reverse the Orders of the lower court granting partial summary to Respondents and should remand the case for trial.

Respectfully submitted,



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March 2, 2015

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William P. Keesley, Circuit Court Judge

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Martha Lewin Argoe,

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v.

Three Rivers Behavioral
Health, LLC; Phyllis Bryan-
Mobley, MD; David A.
Steiner, MD; Cheryl C.
Dodds, MD; Doris Ann
Burrell, RN

Respondent,

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on all Respondents by depositing a copy of it in the United States Mail, postage prepaid, on March 2, 2015, addressed to their attorneys of record, listed below as:

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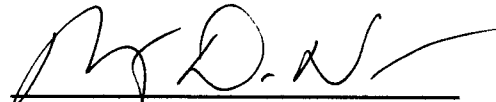
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RE: Martha Lewin Argoe, Appellant v. Three Rivers Behavioral Health, LLC, et al., Respondents
Case No. 2007-CP-32-01981

Dear Ms. Kitchings:

I hope this letter finds you doing well. Enclosed please find the original and copy of Initial Reply Brief of Appellant in the above referenced matter. Please file the original and return the clocked copy in the self-addressed, stamped envelope provided.

If you should need anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Tasha L. Smith".

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