

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

S.C. Supreme Court

The Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000361

Joseph D. McMaster, Petitioner,

v.

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

RESPONDENT CAROLINA PSYCHIATRIC SERVICES, P.A.'S
RETURN TO PETITION FOR WRIT OF *CERTIORARI*

R. Gerald Chambers, Jr. (Bar No. 12065)
Carmelo B. Sammataro (Bar No. 69746)
Turner Padgett Graham & Laney P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR RESPONDENT
CAROLINA PSYCHIATRIC SERVICES, P.A.

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Pursuant to Rule 242(f), SCACR, Respondent Carolina Psychiatric Services, P.A. (hereinafter “Carolina Psychiatric”) respectfully submits this Return in opposition to the Petition for Writ of *Certiorari* filed by Petitioner Joseph D. McMaster (hereinafter “McMaster”).

STATEMENT OF THE CASE

Respondent John H. DeWitt, M.D., (hereinafter “Dr. DeWitt”) treated McMaster for Adult Attention Deficit Disorder and prescribed him Adderall. On May 13, 2008, McMaster was involuntarily committed to Palmetto Health Baptist Hospital in a “delusional and paranoid” state. (R. p. 112) McMaster was discharged May 28, 2008, and Dr. DeWitt stopped prescribing Adderall to McMaster. (*Id.*) McMaster was re-admitted to the hospital on June 25, 2008, “in a paranoid and psychotic state.” (R. p. 114)

McMaster commenced a medical malpractice action against Dr. DeWitt and Carolina Psychiatric alleging his psychosis and hospitalization resulted from Dr. DeWitt’s over-prescribing of Adderall. Discovery commenced, and McMaster testified during his deposition that Dr. DeWitt told him in May of 2008 that his psychosis resulted from “Adderall induced psychosis. . . .” (R. p. 82, line 10 – p. 83, line 6) Further, when asked what Dr. DeWitt did “wrong,” McMaster responded Dr. DeWitt “gave me too much medicine. . . . I mean, it was just way too much and I didn’t know it until it was too late.” (R. p. 80, lines 8-18)

In light of McMaster’s deposition testimony, Dr. DeWitt moved for summary judgment on November 20, 2012. (R. pp. 22-23) Dr. DeWitt’s employer, Carolina Psychiatric, moved for summary judgment on the same grounds on November 28, 2012. (R. pp. 24-25) Two days before the motion hearing was scheduled, McMaster submitted

an affidavit contradicting his prior sworn deposition testimony and indicating he was not aware of Dr. DeWitt's alleged negligence until June 2008. (R. pp. 40-42)

The circuit court heard oral argument of the motions on December 13, 2012, and entered an order granting summary judgment to both Dr. DeWitt and Carolina Psychiatric on February 21, 2013. (R. pp. 4-8) The circuit court found "no genuine issue of material fact about the date [McMaster] was on notice of his claim." (R. p. 7) The circuit court declined to consider McMaster's Affidavit, which the court concluded was a sham affidavit. (R. p. 3)

McMaster filed a motion for reconsideration on March 5, 2013, which was denied via order entered on March 11, 2013, followed by a timely notice of appeal to the South Carolina Court of Appeals. (R. p. 9) Following oral argument on October 8, 2014, the court of appeals issued its order dated December 3, 2014, in which it affirmed the grant of summary judgment in all respects. (App. pp. 2-13) McMaster timely petitioned for rehearing, which was denied via Order filed January 27, 2015. (App. pp. 14-21) Thereafter, McMaster filed his Petition for a Writ of *Certiorari* in this Court.

STATEMENT OF THE FACTS

Dr. DeWitt is a psychiatrist who treated McMaster. Dr. DeWitt prescribed McMaster Adderall for the treatment of Adult Attention Deficit Disorder. On May 13, 2008, McMaster was involuntarily committed to Palmetto Health Baptist Hospital. He remained hospitalized until May 28, 2008, when he was discharged in good health. (R. p. 112) According to McMaster, Dr. DeWitt informed him that the hospitalization was a result of Adderall induced psychosis and ceased prescribing the medication. McMaster

was re-admitted to the hospital about one month later on June 25, 2008, for paranoia. (R. p. 114)

ARGUMENT

The primary thrust of McMaster's Petition for a Writ of *Certiorari* is that the circuit court and the court of appeals either misapprehended his arguments on appeal or applied existing law incorrectly. Essentially, McMaster contends the courts below placed too much emphasis on his testimony concerning when, precisely, he was on notice of a claim, that the courts misunderstood when a reasonable person would have been on notice of a claim under similar circumstances, and that the decision to exclude his affidavit as a "sham" affidavit constitutes error. These contentions are mistaken, and McMaster's Petition should be denied.

I. THE DECISION BY THE COURT OF APPEALS DOES NOT WARRANT FURTHER REVIEW PURSUANT TO RULE 242, SCACR.

The South Carolina Appellate Court Rules provide that a "writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. Typically, the grant of certiorari is limited to cases wherein: (1) there are novel questions of law; (2) there is a dissent in the decision of the court of appeals; (3) the decision by the court of appeals is in conflict with a prior decision of this Court; (4) substantial constitutional issues are directly involved; or (5) a federal question is included, and the decision by the court of appeals conflicts with a decision of the Supreme Court of the United States. Rule 242(b), SCACR; *see also* Toal, Vafai & Muckenfuss, *Appellate Practice in South Carolina* (2d Ed.) at p. 276. The present case does not fit within any of these categories, and no "special and important" reason exists to merit further review.

The categories enumerated in Rule 242(b) by definition do not apply to McMaster's Petition and, therefore, do not require extensive discussion. The court of appeals' decision does not contain a dissenting opinion or decide any federal question. This case does not present any novel legal issue, and the result is not in conflict with any prior decision by this Court. The court of appeals correctly applied existing law and unanimously affirmed the decision by the trial court that, his self-serving affidavit notwithstanding, McMaster delayed too long in filing his claim.

While the elements enumerated in Rule 242(b) are not the exclusive bases upon which this Court may decide to grant or deny certiorari, no other compelling reason exists for this Court to grant McMaster's Petition. The ruling of the court of appeals simply does not present the significant or far-reaching issues contemplated by Rule 242(b). Moreover, the analysis by the court of appeals is straight-forward and does not involve new or emerging legal doctrines or issues of general public importance sufficient to justify additional review.

II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE GRANT OF SUMMARY JUDGMENT TO RESPONDENTS.

A. Both the circuit court and the court of appeals found ample record evidence to conclude McMaster was on notice of a claim in May 2008.

On the notice question, the undisputed evidence revealed, and the court of appeals 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." (App. p. 6) This conclusion is bolstered by Appellant's own testimony, quoted *verbatim* in the court's Opinion, in which McMaster testified three separate times that he was aware in May 2008 of a claim against Dr.

DeWitt. (*Id.*, pp. 6-7) More importantly, the court of appeals 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. (App. p. 8) In addition, the court of appeals pointed to medical records from the May 2008 hospitalization indicating McMaster's illness "'likely [was] substance induced from [prescription] pills' and due to 'overutilization of Adderall.'" (*Id.*) These records¹ include the May 2008 discharge summary.

Setting aside the issue of McMaster's self-serving affidavit, addressed below, there was ample evidence – both in terms of McMaster's own testimony and the medical records from the May 2008 admission – from which the circuit court and the court of appeals reasonably could conclude that McMaster was on notice of claim more than three years before he commenced this action. As such, summary judgment was appropriate, and McMaster's Petition should be denied.

B. The court of appeals correctly deferred to the sound discretion of the trial court in declining to consider McMaster's "sham" affidavit submitted two days prior to the hearing on Respondents' summary judgment motions.

¹ Numerous additional records before both the circuit court and the court of appeals reference paranoia and/or delusional behavior that is attributed to over-use of prescription medication. (R. p. 102 (Detention Order Request), p. 104 (May 13, 2008 progress note reflecting "[p]ossible delusion [secondary] to overutilization of Adderall"); p. 105 (May 17, 2008 progress note indicating "Dr. DeWitt . . . feels hosp. is indicated to adjust meds."); p. 106 (May 28, 2008 discharge summary noting "It was felt that the patient had been overusing his Adderall and possibly getting Adderall from other physicians that might have precipitated this delusional condition."); p. 109 (May 13, 2008 Examination for Emergency Admission noting McMaster was "taking high levels of Adderall which may be playing a role in his symptoms."); p. 110 (May 13, 2008 Examination for Emergency Admission, Part II, noting "possible Adderall overuse"))

Faced with damaging admissions in his deposition and a fast approaching hearing on Respondents' motions for summary judgment, McMaster filed an affidavit attempting to contradict his prior sworn testimony. Recognizing the self-serving nature of this effort, the circuit court correctly determined the affidavit was an attempt to create a sham issue of fact and declined to consider it. (R. p. 3) The court of appeals affirmed, noting the decision to accept or reject the affidavit was appropriately vested in the sound discretion of the trial court upon consideration of the factors outlined by this Court in *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004). (App. p. 10) The circuit court followed this Court's instruction and made findings to support its ruling. (R. p. 3)


While McMaster now argues that the timing of Respondents' motions for summary judgment and the availability of his deposition transcript were somehow responsible for the delay in the filing of his affidavit, "McMaster's affidavit contains no justification. In fact, the affidavit makes no reference to his deposition testimony at all." (App. p. 10) The court of appeals exhaustively reviewed the record and correctly determined the circuit court exercised sound discretion in declining to consider McMaster's sham affidavit. Accordingly, further review of this issue is unnecessary and unwarranted, and McMaster's Petition should be denied.

CONCLUSION

Based on the foregoing, Respondent Carolina Psychiatric Services, P.A. respectfully urges the Court to deny Petitioner's Petition for Certiorari.

(Signature page to follow.)

April 20, 2015



R. Gerald Chambers, Jr. (Bar No. 12065)

Carmelo B. Sammataro (Bar No. 69746)

Turner Padgett Graham & Laney P.A.

Post Office Box 1473

Columbia, SC 29202

Phone: (803) 254-2200

Fax: (803) 799-3957

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

PROOF OF SERVICE

I certify this 20th day of April 2015 that I have served a copy of RESPONDENT CAROLINA PSYCHIATRIC SERVICES, P.A.'S RETURN TO PETITION FOR WRIT OF *CERTIORARI* upon other counsel of record, by mailing same, postage prepaid in the United States mail, addressed to the following:

Charles L. Henshaw, Jr., Esquire
Furr & Henshaw
1534 Blanding Street
Columbia, SC 29201

ATTORNEYS FOR PETITIONER

James Edward Bradley, Esquire
John C. Bradley, Jr., Esquire
Moore, Taylor & Thomas, P.A.
P. O. Box 5709
West Columbia, SC 29171

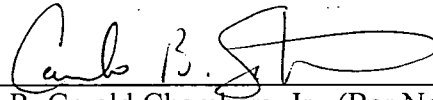
ATTORNEYS FOR RESPONDENT
JOHN H. DEWITT, M.D.

(Signature page to follow.)

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

April 20, 2015

By:



R. Gerald Chambers, Jr. (Bar No. 12065)

Carmelo B. Sammataro (Bar No. 69746)

Post Office Box 1473

Columbia, SC 29202

Telephone: (803) 254-2200

Facsimile: (803) 799-3957

ATTORNEYS FOR RESPONDENT

CAROLINA PSYCHIATRIC SERVICES, P.A.

Turner | Padget

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

April 20, 2015

VIA HAND DELIVERY:

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

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S.C. Supreme Court

Re: Joseph D. McMaster v. John H. DeWitt, M.D. and Carolina Psychiatric Services, P.A.
Appellate Case No.: 2015-000361
File No.: 888.411


Dear Mr. Shearouse:

Enclosed please find the original and seven copies of Respondent Carolina Psychiatric Services, P.A.'s Return To Petition For Writ Of *Certiorari* regarding the above-referenced matter. Also enclosed are the original and one copy of the Proof of Service. Please file the original documents and return a clocked copy of each to my attention 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.)