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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

C.A. No.: 2007-CP-32-01981

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.

RESPONDENT'S BRIEF OF CHERYL C. DODDS, MD

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE TRIAL COURT CORRECTLY LIMIT THE ISSUES REMAINING FOR TRIAL IN THIS MEDICAL NEGLIGENCE ACTION BASED ON THE PRIOR RULINGS OF THE SOUTH CAROLINA SUPREME COURT IN THIS CASE?**

STATEMENTS OF THE CASE AND FACTS

Pursuant to Rule 208(b)(6), SCACR, Dr. Cheryl C. Dodds hereby joins in the briefs submitted by the other Respondents to this appeal and all arguments contained therein. Dr. Dodds submits this brief to clarify the issues and arguments that pertain directly to her.

The operative complaint in this matter only includes one claim against Dr. Dodds.¹ (R. at 148-59). This claim is for medical negligence stemming from Argoe's

¹ This case has a long history, including two previous opinions from the South Carolina Supreme Court, *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010) ("*Argoe I*") and *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 710 S.E.2d 67 (2011) ("*Argoe II*"). *Argoe II* provides the following statement of the facts/ procedural background as it relates to Martha Argoe's treatment at Three Rivers Behavioral Health, LLC ("Three Rivers"):

On June 9, 2005, due to health insurance constraints, Appellant was transferred and admitted to [Three Rivers]. Based on her initial psychiatric evaluation, which was conducted by Dr. Phyllis Bryant-Mobley, a provisional diagnosis was made that Appellant was suffering from bipolar disorder with manic and psychotic features. On June 10, 2005, Three Rivers completed the Notification of Emergency Admission and Appointment of Designated Examiners.

On June 13, 2005, Darlington County Probate Court Judge Marvin Lawson issued an Order for Continued Hospitalization and for Hearing to be held on June 21, 2005. That same day, Judge Lawson appointed Dr. Bryant-Mobley and Doris Ann Burrell, a registered nurse, as designated examiners. On June 14, 2005, Appellant was notified of the hearing and the name of her court-appointed counsel.

On June 21, 2005, Judge Lawson conducted a hearing at which the court-appointed examiners presented their findings regarding Appellant's mental health. Appellant and her attorney were in attendance and participated in the hearing. On that same day, Judge Lawson issued an Order for Continued Treatment with mandatory outpatient treatment to follow at the Orangeburg County Mental Health Facility for a period not to exceed twelve months.

On July 8, 2005, Probate Court Judge Jones-Glover issued an order appointing Dr. Cheryl Dodds, one of Appellant's treating physicians at Three Rivers, to examine Appellant as to whether she needed a guardian

treatment in the summer of 2005. In 2005, Dr. Dodds was a physician at Three Rivers. As alleged in the complaint and found by the trial court, Dr. Dodds did not see Argoe until June 27, 2005. (R. at 155, ¶47; R. at 16). Argoe was discharged from Three Rivers on July 20, 2005. (R. at 156, ¶56). Dr. Dodds has not treated Argoe since her discharge from Three Rivers. (R. at 2558-60).

Dr. Dodds answered the Second Amended Complaint, asserting numerous defenses, including quasi-judicial immunity and *res judicata* based on prior appellate rulings in this case. (Answer to Second Amended Complaint, R. at 186-89). Dr. Dodds later moved for summary judgment on these grounds, among others, on October 1, 2012. (R. at 225-26).

On August 29, 2013, a hearing was held on this motion, together with a motion filed on behalf of Three Rivers and Dr. Phyllis Bryant-Mobley. (R. at 12). A formal order followed on March 6, 2014. In that order, the trial court granted partial summary judgment to Dr. Dodds, Dr. Bryant-Mobley, and Three Rivers with respect to “conduct or treatments that took place on or before June 21, 2005.” (R. at 13). The order did not grant summary judgment with respect to “any claims alleged to have occurred between the entry of the Probate Court’s order on June 21, 2005 and the discharge of [Argoe] from in-patient treatment on July 20, 2005.” (*Id.*). The order clarified that the underlying

and/or a conservator. Although Dr. Dodds believed Appellant to be an “incapacitated person” and in need of a guardian/conservator, she could not definitively determine whether Appellant’s condition was temporary or permanent.

On July 20, 2005, Appellant was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her prescribed medication. Dr. Dodds’s discharge diagnosis was “bipolar disease, manic with psychosis.”

Argoe II at 466-69, 710 S.E.2d at 69-71 (footnotes omitted).

diagnosis of mental illness was subject to quasi-judicial immunity based on the Probate Court's finding on June 21, 2005; therefore, Argoe "is precluded from recovering for an alleged misdiagnosis of mental illness . . . from June 22, 2005, to [Argoe's] discharge on July 20, 2005." (R. at 22). The trial court further found that Argoe was barred from recovering for any acts or omissions after her July 20, 2005 discharge because she voluntarily consented to taking her prescribed medications at that time as found in *Argoe II*. (R. at 23). However, the order makes clear that Argoe's claims for medical negligence between June 22, 2005 and her discharge on July 20, 2005 remain for trial.

Argoe sought reconsideration of this decision, resulting in a written order denying the motion dated June 6, 2014. (R. at 32-35). In that order, the trial court clarified that "[there] has to be a reconciliation of the prior decisions by the Supreme Court and the matters currently before the court, and this court has attempted in good faith to make its rulings in the proper context." (R. at 33). In doing so, the trial court accepted the Supreme Court's factual determinations and other findings in *Argoe II*, including the finding that Argoe did not challenge the probate courts' orders of commitment and continued hospitalization. The trial court further noted that it did not base its ruling as to Dr. Dodds on any finding of immunity as she did not treat Argoe until June 27, 2005. (R. at 35). This appeal followed.

ARGUMENT

Argoe has challenged the trial court's grant of partial summary judgment to Dr. Dodds; however, a review of the chronology of the case shows that Dr. Dodds's treatment of Argoe was limited to the window of time for which the trial court did not grant summary judgment. Moreover, the trial court did not grant partial summary judgment to Dr. Dodds with respect to her treatment of Argoe on the basis of immunity. (R. at 35). Dr. Dodds's only treatment of Argoe fell between June 27, 2005 and July 20, 2005; therefore, it is unclear what there is for Argoe to appeal with respect to Dr. Dodds.

With respect to the trial court's reliance on *Argoe II*, "a finding by the appellate court contained in a decision in a previous appeal in the same case is the law of the case." Jean H. Toal *et al.*, *Appellate Practice in South Carolina* 81 (2d ed. 2002); citing *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 357, 166 S.E.2d 297, 299 (1969). After receiving the remittitur in *Argoe II*,

the trial court acquire[d] jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling. Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form. The decision of the appellate court is final as to all questions decided. It is the duty of the trial court to follow the decision of the appellate court.

Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (citations omitted). This is exactly what the trial court sought to do.²

² The trial court's use of the term *res judicata* has its roots in the *Argoe II* discussion of the commitment orders and underlying facts. As found there:

Furthermore, there is no evidence that [Argoe] appealed [the commitment] order. Because [the commitment] order constitutes a final adjudication regarding the validity of the commitment proceedings, the doctrine of *res judicata* precludes [Argoe] from asserting any challenge to the commitment orders.

Chief Justice Toal has explained that the “law of the case” doctrine is distinguished from *res judicata* “in that the former applies only to subsequent proceedings in the same litigation, whereas the latter prevents relitigation of particular issues or claims actually litigated and decided in a prior suit. Toal, *Appellate Practice in South Carolina* 81. Thus, law of the case clearly applies here as these matters have all arisen in the same case.

The probate court orders regarding Argoe’s commitment and hospitalization were not appealed and were the law of the case as found by the Supreme Court in *Argoe II* and noted by the trial court.³ *Argoe II* at 476, 710 S.E.2d at 75 (“Because Appellant failed to timely and properly challenge the probate court’s orders, they are presumed valid.”); see *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding unappealed ruling is law of the case). Inherent in those orders is the underlying medical diagnosis and finding that Argoe was mentally ill and in need of treatment at the time of her commitment. Argoe cannot challenge those findings now. As found in *Argoe II*, Argoe cannot “retroactively invalidate the commitment orders that were procedurally proper and factually substantiated by court-appointed medical personnel. To find otherwise, [the court] would undermine the probate court’s authority in involuntary commitment proceedings.” *Argoe II* at 772, 710 S.E.2d at 73. Instead,

Additionally, we disagree with [Argoe’s] assertion that her involuntary commitment was without a factual basis.

Argoe II at 471-72, 710 S.E.2d at 72 (2011) (citations and footnotes omitted). In any event, these matters were previously determined in *Argoe II*, and this Court may affirm for any reason appearing in the record pursuant to Rule 220, SCACR.

³ Argoe’s counsel conceded the validity of the commitment orders at oral argument in *Argoe II*. *Argoe II* at 471 n.8, 710 S.E.2d at 72 n.8.

and as found by the trial court, she may pursue a claim for medical negligence for any deviation from the standard of care for the treatment she received following the probate court orders.

CONCLUSION

For all of the above reasons, the trial court correctly framed the issues for trial in this case with respect to Dr. Dodds. Accordingly, the orders on appeal must be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. Ben Alexander", written over a horizontal line.

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Dated: April 16, 2015

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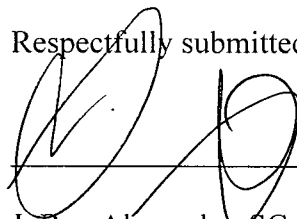
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CERTIFICATE OF COMPLIANCE

I certify that the final respondent's brief in this matter complies with Rule 211(b), SCACR and the April 15, 2014 Order of the South Carolina Supreme Court relating to personal data identifiers.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have served the *Respondent's Brief of Cheryl C. Dodds, MD* and *Certificate of Compliance* on April 17, 2015, by mailing copies of same via United States Mail, postage prepaid, to the following:

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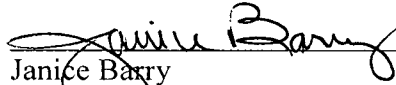
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