

RECEIVED

JUL 07 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY COURT OF COMMON PLEAS
Frank R. Addy, Jr., Circuit Court Judge

Civil Action No. 2011-CP-30-1138

Appellate Case No. 2014-002516

Lisa Dennie and Jeffrey Dennie, Respondents,

v.

Byron A. Brown, MD, Laurens County Obstetrics and Gynecology, LLC, and
Laurens County Healthcare System, d/b/a Laurens County Hospital, Defendants,

of whom Byron A. Brown, MD and Laurens County
Obstetrics and Gynecology, LLC are the Appellants.

REPLY BRIEF OF APPELLANTS

Steven A. Snyder
Collie W. "Trip" Lehn, Jr.
Davis, Snyder & Williford, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
(864) 335-3500
Attorneys for Appellants

TABLE OF CONTENTS

Table of Authorities 3

Argument

1. Regardless of the fact that Respondents obtained a copy of the Stribling letter from a source other than a hospital peer review committee, the letter falls within the ambit of section 40-71-20, which bars its admission into evidence in the trial of a civil action having nothing to do with an appeal of a committee action 4

2. Under *Hollman v. Woolfson* and Rule 403, the Stribling letter and testimony regarding the letter should not have been admitted because it described surgical complications suffered by nonparty patients of Brown 5

Conclusion 8

TABLE OF AUTHORITIES

CASES

Hollman v. Wolfson, 384 S.C. 571, 683 S.E.2d 495 (2009) 5, 6, 7
McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993) 4

STATUTES

S.C. Code Ann. § 40-71-10 (before amendment in 2012) 5
S.C. Code Ann. § 40-71-20 4

RULES

South Carolina Rules of Evidence, Rule 403 5, 7

ARGUMENT

1. **Regardless of the fact that Respondents obtained a copy of the Stribling letter from a source other than a hospital peer review committee, the letter falls within the ambit of section 40-71-20, which bars its admission into evidence in the trial of a civil action having nothing to do with an appeal of a committee action.**

The “proceedings and all data and information acquired by” a hospital peer review committee are “confidential” and “not subject to discovery, subpoena, or *introduction into evidence in any civil action* except upon appeal from the committee action.”¹ All documents generated or acquired by a hospital peer review committee are protected under this law.²

Judge Addy essentially ruled that because Respondents obtained a copy of the Stribling letter by means other than discovery from or subpoena to the hospital or peer review committee, section 40-71-20 did not apply and did not bar its admission into evidence. Yet the plain language of the statute contradicts that conclusion. No matter how the document was obtained or discovered, because it was a document acquired by a peer review committee at Laurens Hospital, it was “not subject to...introduction into evidence in any civil action...”

Stribling, after talking with the hospital’s CEO, wrote the letter, in his capacity as the hospital medical staff’s Chief of Surgery and a member of the Medical Executive Committee (MEC),³ to Dr. Weaver, the Chief of Staff, for the purpose of initiating a peer review process either by the voluntary agreement of Brown or by official action of the MEC. He wrote:

Because of what appears to me to [be] a worrisome pattern of complications, I will, as Chief of Surgery, respectfully ask Dr. Brown to temporarily relinquish his privileges to doing all pelvic surgery *until the cases can be reviewed by an outside reviewer*. If Dr. Brown chooses not to do this *I will request an emergency meeting of*

¹ S.C. Code § 40-71-20 (emphasis added). This section applies to hospital peer review proceedings and documents pertaining to incidents predating June 26, 2012, the effective date of 2012 South Carolina Laws Act 275 (H.B. 4008), which amended section 40-71-20 and added section 44-7-392 to govern the hospital peer review process.

² *McGee v. Bruce Hospital System*, 312 S.C. 58, 62, 439 S.E.2d 257, 260 (1993).

³ Stribling Dep., p. 118, lines 2-6, ROA __.

*the MEC to decide whether official action should be considered regarding his operating privileges.*⁴

Contrary to Plaintiffs' assertions⁵, there is ample record evidence that this letter launched a peer review of some of Brown's surgical cases and led Brown to temporarily relinquish his surgical privileges (or most of them) pending the outcome of the peer review. The letter itself indicates that the MEC is a peer review committee (more precisely, a "committee of a medical staff of a licensed hospital" under former section 40-71-10⁶), as the MEC had the power to take "official action" regarding Brown's operating privileges (i.e. restrict or revoke his privileges). Plaintiffs, over Defendants' objections, introduced an Addendum (dated May 21, 2010) to an earlier Agreement (dated February 17, 2010) between Laurens County Health Care System "through its Medical Executive Committee ('MEC') and Brown.⁷ Portions of the Addendum referring to peer review were redacted, but the trial transcript includes some of the redacted language: "The MEC continued the professional review activity [peer review]...described in the Original Agreement prior to the MEC taking any action as provided for under section 10.5 of the Medical Staff Bylaws."⁸

2. Under *Hollman v. Woolfson* and Rule 403, the Stribling letter and testimony regarding the letter should not have been admitted because it described surgical complications suffered by nonparty patients of Brown.

In *Hollman v. Woolfson*, our Supreme Court held that evidence relating to a defendant doctor's treatment of nonparty patients is *irrelevant* to a plaintiff's medical malpractice claims and

⁴ Ex. P-36, ROA ___.

⁵ Respondents' Brief at 12.

⁶ June 26, 2012 was the effective date of 2012 South Carolina Laws Act 275 (H.B. 4008), which amended sections 40-71-10 and 40-71-20 and added section 44-7-392 to govern the hospital peer review process.

⁷ Ex. P-18, ROA ___.

⁸ Tr., p. 269, lines 14-24, ROA ___.

cannot be used to show that the defendant breached the standard of care in rendering medical care to the plaintiff.⁹ Each case must be decided on its own merits.

The Stribling letter described a series of surgical complications suffered by at least three other patients of Brown, and Stribling testified that there were *more* ureteral and other complications for which Brown was responsible which Stribling omitted from his letter. Plaintiffs used the Stribling letter in an attempt to persuade the jury that the complications suffered by Brown's other patients proved that Brown was negligent in Lisa Dennie's case. Plaintiffs insinuated that, because Stribling thought Brown was incompetent and responsible for negligently injuring numerous patients, the jury should draw the same conclusion and hold Brown liable for Dennie's injury. This is evident from Plaintiffs' counsel's (Mr. Wright) questioning of Stribling (see Appellants' Initial Brief at 13) and Defendants' expert witness, Dr. O'Dell. Mr. Wright asked O'Dell the following:

Q. But [Stribling's letter] also gives an overview of at least what the surgical staff at Laurens County Hospital feels of Dr. Brown.

MR. SNYDER: Objection, Your Honor. It's one man's letter. One man's—

THE COURT: Sustained. It's limited to the author of the letter, so far as I can reason, so.

Q. Let me rephrase the question. Would you agree that the letter sets forth what the chief of surgery at Laurens County Hospital believes to be the surgical competence, if you will, of Dr. Brown?

A. That's what this letter is about, yes.¹⁰

Mr. Wright also emphasized Stribling's letter in his closing argument, saying:

Now, for surgical competence the chief of surgery wrote a letter that he was concerned about a continuing pattern of surgical misadventures of Dr. Brown and

⁹ *Hollman v. Woolfson*, 384 S.C. 571, 579, 683 S.E.2d 495, 499 (2009).

¹⁰ Tr., pp. 815-16, ROA __.

that he has created a worrisome pattern of complications. *I think that's evidence of whether or not [the] proper standard was used in this particular case.*¹¹

Mr. Wright's argument to the jury was *diametrically opposed* to the law of this state as set forth in *Hollman*. Evidence of complications suffered by other patients, even a "pattern" of complications, cannot be admitted to prove that Brown deviated from the standard of care, and that is precisely and undeniably what Plaintiffs sought to do and succeeded in doing.

Plaintiffs' argument that the letter was probative of Brown's credibility and was admitted to show what prompted Brown to write a letter to the hospital CEO raising concerns about defective electrocautery instruments supplied by the hospital is a complete sham.¹² It is clear that Plaintiffs used the letter only to highlight the extremely prejudicial fact that other patients of Brown had suffered similar injuries (injuries to the ureter) and that Dr. Stribling, one of Brown's colleagues, had serious concerns based on a series of surgical complications that Brown lacked the competence to do the type of surgery he performed on Lisa Dennie.

If the letter was at all relevant, the court nevertheless should have excluded it on the grounds of Rule 403, SCRE, as its probative value was substantially outweighed by the danger of unfair prejudice. What could be more prejudicial to a defendant physician in a medical malpractice case than evidence that a number of his other patients suffered the same or similar surgical complications? Such evidence is virtually insurmountable and is not a proper basis for the jury's decision that the defendant departed from the standard of care in the case at bar.

¹¹ Tr., p. 904, ROA __.

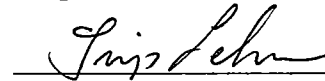
¹² Respondents' Brief at 19.

CONCLUSION

Because the trial court erred in admitting the Stribling letter and Stribling's testimony about the letter and its contents, including irrelevant and highly prejudicial evidence about numerous surgical complications suffered by nonparty patients of Brown, this Court should grant Brown and LCOG a new trial.

July 2, 2015

Respectfully submitted,



Steven A. Snyder
Collie W. "Trip" Lehn, Jr.
Davis, Snyder & Williford, P.A.
5 Hawthorne Park Court
Greenville, SC 29615
(864) 335-3500
Attorneys for Appellants

RECEIVED
JUL 07 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Laurens County Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Civil Action No. 2011-CP-30-1138

Appellate Case No. 2014-002516

Lisa Dennie and Jeffrey Dennie, Respondents,

v.

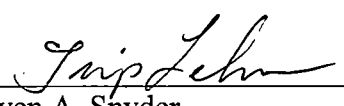
Byron A. Brown, MD, Laurens County Obstetrics and Gynecology, LLC, and
Laurens County Healthcare System, d/b/a Laurens County Hospital, Defendants,

of whom Byron A. Brown, MD and Laurens County
Obstetrics and Gynecology, LLC are the Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' Reply Brief and Designation of Matter to be Included in the Record on Appeal on Lisa and Jeffrey Dennie by depositing a copy of same in the United States Mail, postage prepaid, on July 2, 2015, addressed to their attorney of record, Joseph G. Wright, III, Post Office Drawer 1778, Anderson, South Carolina 29622-1778.

July 2, 2015


Steven A. Snyder
Collie W. "Trip" Lehn, Jr.
Davis, Snyder & Williford, PA
5 Hawthorne Park Court
Greenville, SC 29615
(864) 335-3500
Attorneys for Appellants

DAVIS, SNYDER & WILLIFORD, P.A.

ATTORNEYS AT LAW
5 HAWTHORNE PARK COURT
GREENVILLE, SC 29615

ASHBY W. DAVIS*
STEVEN A. SNYDER
DAVID L. WILLIFORD
COLLIE W. "TRIP" LEHN, JR.
KEITH D. KNOWLTON

*ALSO ADMITTED IN GEORGIA

TELEPHONE
(864) 335-3500

FAX
(864) 335-3505

dsandwlaw.com

July 2, 2015

RECEIVED

JUL 07 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Lisa Dennie v. Byron A. Brown
Appellate Case No. 2014-002516

Dear Ms. Kitchings:

Enclosed for filing is the original and one copy of the Reply Brief of Appellants and Designation of Matter to be Included in the Record on Appeal, along with Proof of Service. Please return a clocked-in copy of each to me. Thank you for your assistance.

Sincerely,

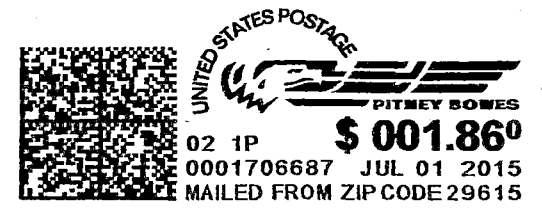


Collie W. "Trip" Lehn, Jr.
Davis, Snyder & Williford, PA
5 Hawthorne Park Court
Greenville, SC 29615
(864) 335-3500
Attorney for Appellants

Enclosures

cc:

Joseph G. Wright, III
Post Office Drawer 1778
Anderson, SC 29622-1778
Attorney for Respondents



DAVIS, SNYDER & WILLIFORD, P.A.

ATTORNEYS AT LAW
5 HAWTHORNE PARK COURT
GREENVILLE, SC 29615

RECEIVED
JUL 07 2015
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

