THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Case No. 2009-CP-46-5195
Appellate Case No. 2015-002135

Angela Patton, as Next Friend of Alexia L., a minor, ...Petitioner

v.

Dr. Gregory A. Miller, Rock Hill Gynecological & Obstetrical Associates, P. A. and Amisub of South Carolina, d/b/a Piedmont Medical Center, ...Respondents.

REPLY TO RESPONDENT'S RETURN TO PETITION FOR A WRIT OF CERTIORARI

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INDEX

TABLE OF AUTHORITIES

CASES

STATEMENT OF THE CASE

Petitioner adopts the Statement of the Case as set forth in the Petition for Writ of Certiorari.

PETITIONER'S RESPONSE TO RESPONDENTS' STATEMENT OF THE CASE

Petitioner objects to Respondents' Statement of the Case to the extent it is inconsistent with the statement included in the Petitioner's writ and to the extent it contains factual inaccuracies.

ARGUMENT

I. DID THE COURT OVERLOOK OR MISAPPREHEND THAT THE LOWER COURT ERRED AND ABUSED ITS DISCRETION BY RULING A MINOR, THROUGH HER NEXT FRIEND, IS NOT LAWFULLY ENTITLED TO RECOVER AS PART OF HER TORT DAMAGES THE MEDICAL EXPENSES SHE INCURRED AND THE VALUE OF FUTURE TREATMENT SHE NEEDS DURING HER YEARS OF MINORITY?

A. Respondents ignore the special and important reasons to grant the Petition.

In its current state, the "necessaries doctrine" works a hardship upon minors with no corresponding benefit to anyone, other than tort-feasors who are shielded from full payment to the child victim. This alone provides special and important reasons to grant writ to address the value of retaining archaic common law that harms the class it intended to protect. This court should determine if a common law rule which harms minors, whom the State has an interest in protecting, should be retained, or if it is against policy. "We have not hesitated to act in the past when it has become apparent that the public policy of this State is offended by outdated rules of law." *Marcum v. Bowden*, 372 S.C. 452, 458, 643 S.E.2d 85, 88 (2007). Consistent application of an unfair, antiquated common law rule with no discernable purpose is not reason to continue its application.

Respondents either ignore or gloss over without addressing the interest this Court has in reviewing the efficacy and continued need for the "necessaries doctrine." Respondents simply state there is no compelling reason to enact change and abrogate the rule. Despite this assertion, Respondents concede numerous other Courts have been steadily taking this very action over the last thirty years. Although Respondents deny this to be a trend, the case citations make clear the

opposite is true. It now appears that the majority of courts have either abrogated the necessaries doctrine, modified it, or read exceptions into the rule in an effort to ameliorate the inequities of the rule. (See pg. 10 and FN 3 of Pet. For Writ.). Moreover, nearly all courts that addressed the need for the rule, if not all of them, either eliminated or limited its effects. *See e.g. Estate of DeSela v. Prescott Unified Sch. Dist. No. 1*, 249 P.3d 767, 769 (2011) (noting that the need for the necessaries doctrine had eroded, that the rule promoted piecemeal litigation, posed a trap for the unwary, "can insulate defendants from liability for the child's medical expenses for reasons unrelated to the defendant's fault," and conflicted with policy providing minors with a longer statute of limitations period).[1]

Moreover, Respondents marginalize the importance of this issue by arguing this particular situation will not occur every time a child is injured by a tort-feasor. Therefore, according to Respondents, the rule is not unfair or burdensome. Pointing out that not every injured child is affected by the rule does not obviate the harm inflicted upon those who are. This does not address whether the rule is fair to those against whom the doctrine does apply. Given the continued rise in health care costs, it is not hard to imagine that parents, despite their best intentions, will find themselves unable to pay all medical bills. There is no continued reason, need, or rationale for the rule, and Respondents don't even attempt to point out any ill result if the law were to change to allow either parent or child to recover these expenses.

Finally, Respondents argue against granting writ because the Court of Appeals declined the invitation to change the common law. However, Respondents failed to note they argued extensively in their Final Brief that the Court of Appeals had no *authority* to change the common

[1] *See also Shaffer-Doan v. Commonwealth*, 960 A.2d 500, 511 (Pa. Commw. Ct.2008) ("An examination of the origins of the parents' and child's mutually exclusive claims suggest that the prohibition against a minor receiving compensation for medical expenses during minority is a common law anachronism . . . .").

law. Respondents argued it "lacks authority to change the law when it has been clearly stated by the Supreme Court" and that "only the Supreme Court should address or consider arguments to change that law." (App p. 247-248). Now before this Court Respondents argue Petitioner "merely repeats the request to change the common law to a higher court." Petitioner is left to wonder how changes to common law ever come about if the Court of Appeals cannot make the change, and if the Court of Appeals does not make the change, the Supreme Court should not grant writ.

B. There is no continued rationale for the "Necessaries Doctrine," either to protect minors or as a creditor's remedy.

Respondents argue that because providers still send bills to parents, this is all that matters for the continued validity of the rule. This statement ignores the problem. After *Greenville Hosp. Sys. v. Smith*, 269 S.C. 653, 239 S.E.2d 657 (1997) minors are now responsible for their own medical bills where their parents are unable to pay. While the bill might be addressed to the parents, if the parents do not pay, then the child is now responsible for the debt.

The original rationale was to assure minors received needed medical care. Today, denying a minor the ability to recover pre-majority tort-related medical expenses in her own name hinders this goal. The minor cannot recover the medical expenses that resulted from another's negligence, yet the medical provider can seek payment for those expenses. Thus, a child's tort recovery can be seized to satisfy medical debts, and the child is not made whole. Because recovery from the tort-feasor for pre-majority treatment is barred, money awarded for pain and suffering and money set aside for care after the age of eighteen will be taken to pay pre-majority medical bills. Such a result hardly promotes and protects the well-being of the minor. Instead, it hinders efforts to assure the minor receive medical treatment by denying her the right to full recovery.

Finally, court's later deemed the necessaries doctrine a "creditor's remedy." *Trident reg'l Med. Ctr. v. Evans*, 317 S.C. 346, 351, 454 S.E.2d 343, 346 n.2 (Ct. App. 1995). However, even

this rationale fails. If the medical provider is the creditor, then any rule which precludes the minor from recovering for medical bills from a tort-feasor is a poor creditor's remedy. The rule diminishes the medical provider's ability to recover for treatment provided to the minor by eliminating an avenue for the minor to secure funds for payment of incurred medical expenses. Therefore, it has no rationale as a creditor's remedy. As all purported reasons for its existence have disappeared, it now remains merely as an anachronism of the common law that now only works a hardship on the class it was intended to protect. For this reason, this Court should grant writ.

C. *Greenville Hosp Sys. v. Smith* outlined new obligations upon the minor that have not been addressed by this Court and its review is a novel Question.

Respondents contend the Court in *Greenville Hosp. Sys. v. Smith*, 269 S.C. 653, 239 S.E.2d 657 (1997) relied upon "a longstanding rule that permitted recovery against a minor for medical expenses when the evidence showed the parents were unable to pay." Interestingly, Respondents make this assertion without citation. The reality is, *Greenville Hosp.* is the first case that enunciated the principle that a minor may be held responsible for his own medical expenses, despite the fact that he cannot recover for the same from a tort-feasor. Review of the effect of such a rule in context of this State's legal system is a novel question of law, as the issue has never before been addressed by this Court. *Id.* at 654, 239 S.E.2d at 658.[2]

Moreover, *Greenville* was not a case where the court took into consideration a challenge to the continued need of the necessaries doctrine and decided to retain it. In fact, a review of the case makes clear that this issue was never even considered by the Court. The issue as stated was whether the minor's estate (which had money from a recovery against a tort-feasor) was liable to

[2] *Greenville* references an antebellum case *Presley v. Davis*, 28 S.C. Eq. (7 Rich Eq.) 105 (1854) as the basis for its ruling. Petitioner has been unable to find a copy of this case. However, it appears to have stood for the proposition that the parent may Petition the Court to use the child's property for the child's maintenance where the father's estate was lacking. Only in *Greenville* did the court extend this to mean that a third party, in this case the hospital, could seek recovery from a minor for unpaid medical bills. Thus, *Greenville* was a new ruling purportedly based upon an old case, not affirmation of a long-standing principle.

a third party for hospital services provided to the minor, even though the minor was living with and being supported by his parents. *Id.* No argument was presented to the court that the necessaries doctrine should be abrogated or that both the minor and parent should be permitted to seek recovery for tort-related pre-majority medical expenses, so long as there is no double recovery. Apparently the minor had already sought his damages from the tort-feasor; he or his estate was not requesting the Court allow for additional recovery. Thus, the fact that the Court in *Greenville* did not *sua sponte* address an issue never brought before it by the parties should not now bar consideration of Petitioner's request for writ on this issue.

No Court in this State has considered the need for a rule that precludes a minor from recovering pre-majority medical expenses despite the fact that she may be held responsible for the same. Accordingly, this is a novel question. Moreover, as it negatively impacts the rights and interests of minors with no corresponding benefit to anyone other than the tort-feasor, there are special an important reasons for this Court to grant writ.

D. Respondents ignored or failed to address that Necessaries Doctrine conflicts with well-established prior decisions of this Court.

This Court has made clear, "There is no tenet more fundamental in our law than liability follows the tortious wrongdoer." *Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 3, 282 S.E.2d 230, 231 (1981). Shielding the tort-feasor from harm he causes a minor directly contravenes this well-established rule. The child is not made whole for her injury, and the tort-feasor escapes liability. Money will have to be taken from either the child's award for pain and suffering or the child's award for future medical expenses and care beyond the age of eighteen. This Court should take this opportunity to correct a rule which harms a minor in favor of the tort-feasor and precludes proper apportionment of the harm to its source. Additionally, abrogating the necessaries doctrine would be in line with recent "trend of abolishing well-established tort

doctrines which inhibit the proper apportioning of liability based on fault." (*Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 641, 532 S.E.2d 856, 863-64 (2000) (Toal, C.J., dissenting).

Respondents failed to address how the necessaries doctrine protects minors or even how it serves as a creditor's remedy. "A rule which no longer serves a legitimate purpose should not be followed solely because of a dogged adherence to stare decisis. Stare decisis should be used to foster stability and certainty in the law, but not to perpetuate error and injustice." *McCall v. Batson*, 285 S.C. 243, 256, 329 S.E.2d 741, 748 (1985). Accordingly, this Court should grant writ to because the necessaries doctrine no longer serves any legitimate purpose.

Respondents failed to address whether the necessaries doctrine undermined the collateral source rule by permitting tort-feasors to avoid full payment for injuries. Tort-feasors are to pay for all the natural and probable consequences of their tort, irrespective of whether the victim can otherwise afford or pay for their medical care. *Haselden v. Davis* 353 S.C. 481, 485, 579 S.E.2d 293, 295 (2003). Barring a minor from recovery of tort-related pre-majority medical expenses from the tort-feasor directly conflicts with the collateral source rule and the policy reasons behind it. For the aforementioned reasons, this Court should grant the Petition for Writ of Certiorari.

II. DID THE COURT OVERLOOK OR MISAPPREHEND THAT THE LOWER COURT ERRED AND ABUSED ITS DISCRETION BY RULING THAT THE DOCTRINES OF IMPLIED OR EQUITABLE ASSIGNMENT AND WAIVER AND ESTOPPEL ARE NOT VALID MEANS OF TRANSFERENCE FROM PARENT TO CHILD OF THE PARENT'S RIGHT TO RECOVER PRE-MAJORITY MEDICAL EXPENSES.

A. The decision by the Court of Appeals conflicts with South Carolina's recognition of implied waiver as a valid means of transference.

Petitioner cited to the published opinion *Lyles v. BMI, Inc.*, 292 S.C. 153, 158-159,355 S.E.2d 282, 285, (Ct. App.1987) to support her contention that there was a transference of interest from mother to child through implied waiver. Respondent acknowledges the existence of this doctrine. However Respondents incorrectly believe that simply because the specific factual

scenario of this case has not been addressed by published opinion in this South Carolina, this implies it does not apply to the facts of this case. There cannot be a published opinion for every conceivable factual scenario for all legal doctrines. The absence of a published opinion of a similar fact pattern is not evidence that the Courts do not recognize the doctrine's application to those facts. No litigant can expect to have published case law specific to every fathomable factual scenario.[3] What is important is that the doctrine exists in this State, and based upon its use and purpose, would be applicable to the facts of this case.

Moreover, in other jurisdictions, this very factual scenario has been reviewed by appellate courts. The North Carolina Supreme Court explained, "[A] father waives this right by participating as guardian ad litem in a trial in which the minor is awarded medical expenses." *Bolkhir v. North Carolina State University*, 365 S.E.2d 898, 902 (N.C. 1988). *See also Doss v. Sewell*, 125 S.E.2d 899, 903 (N.C.1962) ("When the parent in whom the cause of action exists is the next friend and participates in the trial in which an award is made to the infant for medical expenses, the participation is a waiver of the parent's right."). In fact, these courts also noted, "It is immaterial to the defendants whether the infant or the parent asserts the claim." *Id.* From the defendants' point of view, their only concern is that there be no double recovery.[4]

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[3] Petitioner also notes that such argument by Respondents further highlights the need for this Court to grant writ and clarify this issue. See Rule 242(b)(1) noting that a writ may be granted where there are novel questions of law.

[4] Similarly, in *Betz v. Farm Bureau Mut. Ins. Agency of Kansas*, 8 P.3d 756, 758 (Kan. 2000), the Court noted, "[A] parent can waive his or her right to recover for damages properly belonging to the parent, [for example] medical expenses, if these damages are awarded in the child's action." The Court in *Myer ex rel. Myer v. Dyer*, 643 A.2d 1382, 1387 (Del. Super. Ct.1993) stated, "The Court finds that by not presenting their claim in a timely fashion and by presenting a claim on Jennifer's behalf, the adult plaintiffs have waived any claim for medical expenses which under the general rule they would normally recover" and the court held that "under the facts of this case that a separate cause of action has been filed for Jennifer and that she can seek to recover medical expenses incurred during her minority."

Finally, the South Carolina District Court case *McNeill v. United States*, 519 F. Supp. 283 (D.S.C.1981) illustrates the concept of an implied waiver as a valid means of transference. As *McNeill*, explained:

> It is settled law that the primary right of recovery for the cost of medical and nursing care of an injured infant lies with the parents, but it is equally well settled that this right may be waived in favor of a recovery by the infant. The underlying reason for these rules is to prevent double recoveries. It is not to excuse liability. By not asserting within the two-year statutory period any right that they may have had to recover for such cost, the parents have absolutely and irrevocably waived any right that they may have had in that respect. This does not, however, bar the infant nor does it excuse liability.
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> *Id.* at 291 (*quoting Sox v. United States*, 187 F. Supp. 465, 469-470 (D.S.C.1960)

The court then concluded that the minor was "authorized to assert his own claim for medical expenses in the absence of one being asserted by the parents . . . ." *Id.* The same should have been permitted in this case, and it was error for the trial judge not to do so.

Respondents incorrectly assert that Petitioner seeks to use this doctrine offensively. Firstly, there is no need for an affirmative defense to be asserted because there is no dispute between Angela and Alexia regarding the existence of an implied waiver or intent to impliedly waive the right to recover tort-related pre-majority medical costs from Angela to the benefit of Alexia. These are the two parties who would have standing to challenge whether the transference was intended. Respondents are not parties to nor were they involved with the waiver and transfer between Angela Patton and her daughter Alexia. Accordingly, the conduct to assess in determining whether an implied waiver has in fact occurred is Angela's conduct, not Respondents'.

Nevertheless, the doctrine was not used offensively. Only after Respondent challenged Petitioner's ownership of this right by attempting to preclude her recovery did she note she in fact had possession of her mother's right to pre-majority tort-related expenses through implied waiver. By Respondents' logic, every time one sought to show ownership or possession by implied waiver, another could challenge her effort by arguing the person asserting ownership was seeking gain or

profit. Petitioner did not bring suit against a party asserting a right to an asset possessed the party by way of implied waiver. Therefore, Petitioner did is not invoking implied waiver offensively.

B. The decision by the Court of Appeals conflicts with South Carolina's recognition equitable assignment as a valid means of transference.

As with implied waiver, Respondents improperly seek to challenge the validity of an assignment to which they were not a party. The assignment occurred from Angela to Alexia, and Angela is the party to challenge its validity, not a tort defendant who lacks privity. "South Carolina contract law carries a presumption that an individual who is not a party to a contract lacks privity to enforce it." *Thomas Trancik, M.D., P.A. v. USAA Ins. Co.*, 354 S.C. 549, 553-554, 581 S.E.2d 858, 861 (Ct. App.2003). Respondents cannot seek to undo an agreement reached between two parties who have no interest in undoing the agreement.

Accordingly, this Court should grant Petitioner's writ because the decision by the Court of Appeals is in conflict with this states recognition of doctrines of implied waiver and equitable assignment, and because this case poses a novel question of law to the extent that no court has addressed the applicability of these doctrines to this factual scenario.

III. DID THE COURT OVERLOOK OR MISAPPREHEND THAT THE LOWER COURT ERRED AND ABUSED ITS DISCRETION BY DENYING PLAINTIFF'S REQUEST FOR LEAVE TO AMEND THE COMPLAINT AND FOR THE AMENDED COMPLAINT TO RELATE BACK TO THE FILING OF THE ORIGINAL COMPLAINT.

A. The decision by the Court of Appeals conflicts with well-established Supreme Court precedent concerning Rule 15(c) relation back amendments.

Respondent appears to acknowledge that the trial court erred by misquoting Rule 15(c) in its order as stating, "the amendment '. . . relates back [only if the amendment is made] within the period provided by law for commencing the action . . . ." (R. p. 7). The Court in *Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377 (1995) concluded that Rule 15(c) amendments relate back to the filing of the original complaint and that "[t]he purpose of Rule 15(c) is to salvage causes of action

otherwise barred by the statute of limitations." *Grayson* 318 S.C. at 88, 456 S.E.2d at 380. By affirming the trial court's ruling on this issue, its opinion conflicts with this Court's prior decision in *Grayson*. Accordingly, this Court should grant writ to address this issue.

B. A novel question of law exists concerning what construction of Rule 15(c) as to what it permits in terms of substitution of parties.

Despite Respondents' assertions to the contrary, Petitioner has not sought to add a new party. Petitioner's motion to amend sought to change the capacity in which Angela Patton brought suit in this case with respect to recovery for tort-related pre-majority medical expenses which have been and will be incurred by Alexia. A change in plaintiff, or a change in the plaintiff's capacity, was contemplated by the Advisory Committee Notes for the federal version of Rule 15. Respondents acknowledge the Committee Notes envision changing plaintiff.

Twelfth RMA Partners, L.P. v. National Safe Corp., 335 S.C. 635, 518 S.E.2d 44 (Ct. App.1999) illustrates the distinction. Like in this case, in *Twelfth RMA Partners* the defendants cited to *Valentine v. Davis* for the proposition that one cannot change the plaintiff through an amendment to the complaint. The Court disagreed. In distinguishing the case before it from *Valentine v. Davis*, the Court stated, "In this case, however, no new *claims* are being added. The court is only changing the name of the plaintiff. The *subject of the claim*, the underlying note on which the Smiths defaulted, is still the same." *Id.* at 641, 518 S.E.2d at 47 (emphasis added). To the Court, the significant factor was whether new claims were being brought.

As with *Twelfth RMA Partners* no new claims were asserted in the Amended Complaint. The original Complaint already sought the pre-majority tort-related medical expenses. There is no new person seeking recovery for additional causes of action for which defendant was not on notice.

Thomas v. Grayson by analogy also shows that the amendment in this case was permissible. The Court in *Thomas* stated, "The rationale of the older cases was based on the idea that a change

in plaintiff's capacity to sue was tantamount to bringing a new cause of action." *Id.* at 88-89, 456 S.E.2d at 380. *Thomas v. Grayson* allowed the plaintiff's amendment to relate back and therefore changed prior law to allow a change in the plaintiff's capacity. This is precisely what Angela seeks to do in this case: change the capacity in which she has brought suit.

Valentine v. James Davis Valentine v. Davis, 319 S.C. 169, 460 S.E.2d 218 (Ct. App. 1995) involved a number of plaintiffs who previously had their federal lawsuit dismissed and then wanted to join as new plaintiffs in a similar action that was pending in state court against the same defendant. *Id*, 319 S.C. at 171, 460 S.E.2d at 219. It is understandable that the Court in *Valentine* was not interested in allowing an entirely new group of plaintiffs to join a pre-existing lawsuit after their case had been dismissed in federal court. However, in this case, as in *Grayson* and *Twelfth RMA Partners*, Respondents will not be exposed to greater liability than they were already on notice of, no new plaintiffs are bringing new causes of action, no new factual assertions have been made, and the subject of the claims remains the same. Therefore, this Court should grant writ to address these issues as they present both novel questions of law and because the decision by the Court of Appeals is in conflict with prior decisions of this Court.

IV. DID THE COURT OVERLOOK OR MISAPPREHEND THAT THE LOWER COURT ERRED AND ABUSED ITS DISCRETION BY HOLDING THAT THE DEFENDANTS HAD NOT WAIVED, BY FAILING TO PLEAD AS AN AFFIRMATIVE DEFENSE, THEIR ARGUMENT THAT PLAINTIFF CANNOT RECOVER PRE-MAJORITY TORT-RELATED MEDICAL EXPENSES.

A. Petitioner did not waive this argument.

The trial court's order denying Petitioner's motion to alter or amend denied Petitioner's "statute of limitations" affirmative defense. Petitioner never argued Respondent failed to raise the statute of limitations as an affirmative defense. Petitioner set out in detail that argument that that a minor could not recover tort-related pre-majority medical expenses was an affirmative defense and that Respondents never pled this affirmative defense. The court never entered any ruling as to the

argument actually made by Petitioner. There is no requirement that a party file a second motion for reconsideration if the trial court does not address an issue brought before it in the first motion for reconsideration. In *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006), after noting that an issue must be raised and ruled upon to be preserved, the Court explained, "However, an exception to this rule exists where an issue *is raised* but *not ruled upon* at a Rule 59(e) hearing. *Id.* at 565, 633 S.E.2d at 510. Therefore, Petitioner did not abandon this issue.

B. The affirmative defense argument actually asserted by Petitioner was raised *and* ruled upon orally at the Rule 59(e) hearing.

The trial court decided the affirmative defense argument actually made by Petitioner in Respondents' favor in its oral ruling from the bench at the Rule 59(e) hearing, and it did so on the merits. The judge explained his decision to deny Petitioner's argument that Respondents waived their affirmative defense to a minor's ability to recover tort-related pre-majority medical expenses as follows:

> There is no affirmative defense required. If you deny that somebody is entitled to damages at all based on the allegations in the complaint, I think you covered it. Beside which, what is the affirmative defense? Affirmative defense generally related to the conduct of the party. The only party in that lawsuit was this child through her mother. So there was no affirmative defense to assert. It was just a denial."
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> . . .
>
> I know of no case holding otherwise. They denied she was entitled to damages. You alleged damages for medical expenses, which are the pre-majority expenses in part, and they denied it. I can't say where they have to bring to anybody's attention the fact that the minor -- they just denied it. If you have a reason to deny it, you deny it.
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> (R. pp. 185, line 21 to 186, line 14).

Nowhere does the judge mention he would not consider the argument on its merits for failure to raise the issue prior to a Rule 59(e) motion. Nowhere does the judge mention this affirmative defense argument was improperly brought before the Court. Nowhere did the trial court even mention that Petitioner either waived or abandoned her right to make this argument.

In fact, the judge stated he did not consider the affirmative defense argument a new issue raised to the court. The judge noted:

> Now, I need you gentlemen to collaborate or somebody send me an order that covers the matters that the plaintiff says I didn't rule upon. One of those was the implied waiver and implied assignment. As to the rest of it, I deny. *There is nothing new raised in addition,* I'm talking 59(e) now. *There was nothing new raised that wasn't argued, considered, and ruled on or brought to my attention* and the order stands."
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> (R. pp. 184, line 23 to185, line 7). (emphasis added).

Accordingly, the affirmative defense argument actually asserted by Petitioner at the Rule 59(e) hearing was not considered new material raised.

Finally, the question to answer when determining if an issue has been preserved is whether it has "been raised to and ruled upon by the circuit court." *RRR, Inc. v. Toggas*, 378 S.C. 174, 185,662 S.E.2d 438, 443 (Ct. App.2008) (*citing Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006)). Although the written order was silent on Petitioner's actual affirmative defense, the judge placed on the record his above-quoted reasoning for its denial. Thus, the issue was raised and ruled upon, on its merits, by the circuit court. As *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724. (2000) explained, "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." Petitioner presented this argument, Respondent addressed the argument in their response, both parties addressed this affirmative defense argument on its merits at oral argument, and the trial judge reached his decision on the merits of the issue. (R. p. 92; R. pp. 104, line 21 to 106, line 20; R. pp 173, line 22 to 174, line 9; R. pp. 178, line 3 to 184, line 17; R. pp. 184, line 23 to 185, line 7; R. pp. 185, line 21 to186, line 14).

C. Assuming arguendo that Petitioner did not preserve her affirmative defense argument, the Court should nevertheless consider the issue.

Respondents argue that because of a procedural technicality, Petitioner did not timely object to and waived her right to argue that Respondents, by failing to plead as an affirmative defense, waived their right to argue that Alexia should be precluded from recovering tort-related pre-majority medical expenses in her own name or through her mother as Guardian ad Litem. Allowing consideration of Petitioner's argument provides this Court with an additional ground by which it may avoid the harsh result of denying a minor's recovery for tort-related pre-majority medical expenses because of a pleading technicality. Petitioner contends that substantial justice requires consideration of this issue. The parties fully briefed this issue and then had opportunity to argue the issue on its merits at a hearing. Moreover, the judge provided detailed analysis for his rejection of Petitioner's position and did so based upon the merits of the issue before the Court.

"The reasoning adopted by the court below is not binding upon the Supreme Court if the record discloses a correct result." *Potomac Leasing Co. v. Otts Market, Inc.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App.1987). Moreover, when appropriate, Courts in this State regularly give consideration to the aim of substantial justice. *See e.g. Smith v. Smith*, 386 S.C. 251, 261, 687 S.E.2d 720, 726, (Ct. App.2009) "To ensure substantial justice to the parties, the pleadings must be liberally construed." *See also Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 102, 668 S.E.2d 798, 801 (2008) "South Carolina courts have long observed that equity looks beneath rigid rules of law to seek substantial justice." The reviewing Court looks to the record and the merits to determine if issues have been fairly determined and give consideration to whether substantial justice has been done. *See e.g. Potomac Leasing Co. v. Otts Market, Inc.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App.1987). Therefore, even if deemed waived, (which Petitioner disputes) this Court should consider Petitioner's argument that the trial court erred in failing to find that

Respondents waived their right to assert the affirmative defense that Alexia could not seek tort-related pre-majority medical expenses in her own name.[5]

CONCLUSION

For the reasons stated, Petitioner respectfully requests this Court grant a Writ of Certiorari.

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ATTORNEYS FOR PETITIONER

November 24, 2015

[5] *See also Patterson v. Reid,* 318 S.C. 183, 185,456 S.E.2d 436, 437 (Ct. App.1995) (after restating the adage that an issue cannot for the first time be raised in a Rule 59(e) motion, the Court then decided to address the issue on its merits).

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Angela Patton, as Next Friend of Alexia L., a minor, ...Petitioner

v.

Dr. Gregory A. Miller, Rock Hill Gynecological & Obstetrical Associates, P. A. and Amisub of South Carolina, d/b/a Piedmont Medical Center, ...Respondents.

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Petitioner, certifies that I have this 25th day of November, 2015 served copies of the Reply to Respondents' Return to Petition for a Writ of Certiorari upon counsel for the Respondents by depositing them in the United States mail, first-class postage prepaid, addressed to:

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