

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
) )  
Jessica Wright, )  
) )  
Plaintiff, )  
) )  
vs. )  
) )  
Moore Orthopedic Clinic, P.A. and )  
Mark D. Locke, M.D., )  
) )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT  
CASE NO. 2012-CP-40-7765

FILED  
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**ORDER GRANTING PARTIAL  
SUMMARY JUDGMENT**

This matter came before the Court on August 13, 2014 at a hearing on Defendants' Motion for Partial Summary Judgment on Plaintiff's claim for damages for medical expenses. Present at the hearing were S. Randall Hood, Esquire, counsel for Plaintiff; and Kelli L. Sullivan, Esquire, counsel for Defendant. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendants' Motion for Partial Summary Judgment on Plaintiff's claim for damages for medical expenses is **GRANTED**.

**FACTS**

This medical malpractice case arises from treatment of Plaintiff Jessica Wright while she was still a minor. Plaintiff was treated for back pain by Defendant Dr. Mark D. Locke, M.D. in July 2009 when she was sixteen years old. Plaintiff alleges medical malpractice against Defendant as a result of these treatments. In September 2009, Plaintiff underwent surgery due to her worsening condition. The surgeon informed Plaintiff and her father that her condition "could have been avoided if [her initial back pain was] treated quickly and properly," thus putting them on notice of a claim for medical malpractice. Plaintiff filed this action in Richland County Circuit Court on November 21, 2012, after she reached the age of majority. Plaintiff is currently twenty years old.

In this action Plaintiff seeks damages, including "past and future life care expenses" and "past and future medical and health care expenses." Defendants filed their Motion for Partial Summary Judgment on June 16, 2014, seeking to dismiss Plaintiff's claim for recovery of past medical expenses.

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### STANDARD OF REVIEW

Summary judgment is appropriate if “there is no genuine issue as to any material fact.” Rule 56(c), SCRPC. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). “In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

### DISCUSSION

Defendants argue that Plaintiff has no right to recover for medical expenses incurred while she was a minor. Under South Carolina law, a parent is obligated to furnish his or her minor child with “necessary medical service and hospitalization.” *Hughey v. Ausborn*, 249 S.C. 470, 476, 154 S.E.2d 839, 841 (1967); *Trident Reg. Med. Ctr. v. Evans*, 317 S.C. 346, 352, 454 S.E.2d 343, 346 (Ct. App. 1995). Therefore, any right of action by an adult to recover medical expenses incurred while the person was a minor is barred. This cause of action is reserved for the parents of the minor, not the minor himself. *Tucker v. Buffalo Cotton Mills*, 76 S.C. 539, 57 S.E. 626 (1907). South Carolina courts have upheld the ruling in *Tucker*. See *Kapuschinsky v. U.S.*, 259 F. Supp. 1, \*7 (D.S.C. 1966).

Plaintiff argues that *McNeill v. U.S.*, 519 F. Supp. 283 (D.S.C. 1981), allows a child to recover medical expenses incurred while he was a minor under certain circumstances. In *McNeill*, the court said there was “not an absolute bar” to a child’s claims for medical expenses. Rather, the purpose of the “general rule” is to limit medical expense claims by parents to keep from allowing a double recovery. *Id.* at 290. In the present case, it is true that Plaintiff’s parents did not already recover her medical expenses; therefore, there would be no double recovery. However, Plaintiff did not incur the financial burden of paying the expenses either. By seeking to recover those expenses, Plaintiff would be receiving money damages incurred by her parents.

Plaintiff argues that if parents waive the right to pursue the medical expenses, the child should have the opportunity to do so. Plaintiff’s parents states in an affidavit that they waived all rights to collect medical expenses in the hope that Plaintiff could recover them on her own. However, as previously stated, regardless of whether there was a conscious waiver of rights, parents are responsible for the medical bills of their children because it is the duty of the parent

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to care for the child. *See Hughey, supra.* Waiving these rights does not place this duty upon the child.

Additionally, allowing Plaintiff to recover on these claims would essentially extend the statute of limitations. The statute of limitations is three years, which is plenty of time for the parents to pursue their claim. SC. Code Ann. § 15-3-545 (2006). Plaintiff's parents acknowledge that they could have filed a claim and chose not to do so. *See Affidavit of Benjamin Wright.* Therefore, they have lost the right to collect on the past medical expenses. Instead of pursuing the matter in a timely manner, they allowed the clock to run out and have missed their opportunity to recover for these damages under the statute.

**ORDER**

For the reasons stated above, it is therefore **ORDERED** that Defendant's Motion for Partial Summary Judgment on Plaintiff's claim for damages for medical expenses is **GRANTED**; Plaintiff's claims for past medical expenses incurred until she reached her majority are banned.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
January 29, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007765

Jessica Wright

Moore Orthopaedic Clinic P A

PLAINTIFF(S)

Mark D Locke

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to right to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge [Signature] Judge Code \_\_\_\_\_ Date 1/29/2015

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

S. Randall Hood                      Shawn Boyd Deery                      George Cox Beighley                      Kelli Lister Sullivan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court [Signature]