THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2007-CP-00-01981

Martha Lewin Argoe, v. Appellant,

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor; Phyllis Bryan-Mobley, MD; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan, Respondents,

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

FILED

ORIGINAL

Martha Lewin Argoe,) C/A No. 2007-CP-32-01981

2014 MAR 21 A 10:32

Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Versus

ORDER GRANTING SUMMARY JUDGMENT AS TO DAVID A. STEINER, MD.

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor; Phyllis Bryan-Mobley, MD; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan,

Defendants.

Summary Judgment is granted in favor of Defendant David A. Steiner, MD (hereinafter "this Defendant" or "Dr. Steiner") on the claim of medical negligence (the only remaining claim of the Plaintiff's complaint), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. The moving party need not support its motion with affidavits or other materials negating the opponent's claims; instead, the moving party can simply point to the absence of evidence to support the nonmoving party's claims. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537 (1991). Once the moving party satisfies its burden, the nonmoving party must demonstrate specific facts showing that there is a genuine issue for trial. Id.

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App. 2003). Instead, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(c) SCRCP; Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct.App. 1999). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App. 2004).

"This Court has established that '[t]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.'" Hansson v. Scalise Builders of S.C. and Sam Scalise, 374 S.C. 352, 650 S.E.2d 68 (2007) (citing Baughman v. Amer. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)). A court cannot properly deny a defendant's motion for summary judgment after only finding a genuine issue of material fact as to one element of the plaintiff's claim. Id. Under Baughman, to withstand a motion for summary judgment, the court must determine that a genuine issue of material facts exists for each element of the plaintiff's case. Id.

FACTUAL/PROCEDURAL HISTORY

The Plaintiff, Martha Lewin Argoe ("Plaintiff") was married to G. Lewis Argoe, Jr. ("Argoe, Jr.") for forty-two (42) years. They had one child, George Lewis Argoe, III ("Argoe, III"). On or about April 20, 2005, Argoe, Jr. went to Orangeburg

Mental Health Center and spoke with a counselor about involuntarily committing Plaintiff to a psychiatric facility. Plaintiff gave her son her Power of Attorney a year prior to this incident.

This lawsuit has taken various forms over the years. The South Carolina Supreme Court has ruled on two appeals filed by the Ms. Argoe concerning the same factual scenario as the lawsuit in its current posture. In the second reported appellate decision, the Supreme Court set forth the following factual background.

> Pursuant to section 44–17–410 of the South Carolina Code, [Ms. Argoe's] husband (Husband) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005.
>
> On June 6, 2005, Probate Court Judge Pandora L. Jones–Glover issued an Order of Detention that referenced section 44–17–430 of the South Carolina Code and provided that an "officer of the peace take the person [Ms. Argoe] alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician."
>
> On June 7, 2005, deputies with the Orangeburg County Sheriff's Department transported [Ms. Argoe] to the emergency room of The Regional Medical Center of Orangeburg (TRMC). At 3:35 p.m., [Ms. Argoe] was given a physical and mental evaluation. [Ms. Argoe] was discharged at 5:13 p.m. with a diagnosis of "Altered Mental Status" and instructions for her to return the following day for further evaluation. Subsequently, [Ms. Argoe]was driven home by law enforcement.
>
> On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated [Ms. Argoe] at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44–17–410(2) of the South Carolina Code. In this document, Dr. Hooker certified that inpatient psychiatric hospitalization was medically necessary for [Ms. Argoe] and identified Aurora Pavilion Behavioral Health Services (Aurora), a division of the Aiken Regional Medical Center, as the facility that would accept [Ms. Argoe] for further treatment. [Ms. Argoe's] medical records verify that she was involuntarily admitted to that facility on June 8, 2005 at 5:45 p.m. An attending physician at Aurora [Dr. Steiner] completed the requisite Physician Certification form stating that he certified that "the inpatient psychiatric hospital admission was

WPL #3

medically necessary for psychiatric treatment, which could reasonably be expected to improve the patient's condition."

On June 9, 2005, due to health insurance constraints, [Ms. Argoe] was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (Three Rivers). Based on her initial psychiatric evaluation, which was conducted by Dr. Phyllis Bryant–Mobley, a provisional diagnosis was made that [Ms. Argoe] 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, [after a motion to change venue from the Orangeburg County Probate Court, the] 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 [Ms. Argoe's] mental health. [Ms. Argoe] 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.

WPL #4

On July 8, 2005, Probate Court Judge Jones–Glover issued an order appointing Dr. Cheryl Dodds, one of [Ms. Argoe's] treating physicians at Three Rivers, to examine [Ms. Argoe] as to whether she needed a guardian and/or a conservator. Although Dr. Dodds believed [Ms. Argoe] to be an "incapacitated person" and in need of a guardian/conservator, she could not definitively determine whether [Ms. Argoe's] condition was temporary or permanent.

On July 20, 2005, [Ms. Argoe] was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her pre-scribed medication. Dr. Dodds's discharge diagnosis was "bipolar disease, manic with psychosis."

Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 465-68, 710 S.E2d 67, 69-70 (2011) (Argoe II) (underlined emphasis in original; internal footnotes omitted). Pursuant to the June 21, 2005, Order from Probate Judge

Lawson, Ms. Argoe completed her one-year of out-patient therapy around July/August 2006. Soon after completing her outpatient treatment, Ms. Argoe commenced litigation.

The Supreme Court in Argoe II traced the history of the involuntary commitment process. It stated:

> All of Appellant's [Ms. Argoe's] arguments emanate from the following two theories: (1) the Order of Continued Hospitalization (June 13, [2]005) and the Order of Continued Treatment (June 21, 2005) were invalid as they were based on the void initial Order of Detention (June 6, 2005); and (2) there was no factual basis to substantiate the findings underlying the Order for Continued Treatment (June 21, 2005). Without a "lawful" probate court order, Appellant [Ms. Argoe] claims Respondent [Psychatric Solutions, Inc. – which was in the same position as Three Rivers] was not justified in detaining her . . . and it was not reasonable for Respondent to detain her.

The court in Argoe II found that the challenge to the underlying commitment orders was untimely and also barred by *res judicata*. In 2008, Ms. Argoe had filed a Petition to Vacate the Commitment Proceedings. A Probate Judge assigned to the case denied the Petition. That decision was appealed to the circuit court, and The Honorable Diane S. Goodstein affirmed the Probate Judge's decision. The Supreme Court found that the challenge to the commitment proceedings was not timely, that the order of Judge Goodstein constituted the "final adjudication regarding the validity of the commitment proceedings," and that there was a factual basis for the commitment.

After determining that the commitment was valid, the court in Argoe II turned its focus on whether a previous granting of summary judgment by another circuit judge was proper. It then analyzed each of the three causes of action that

were before the court at that time (false imprisonment, defamation, and intentional infliction of emotional distress), and it upheld the dismissal of those claims.

In the section captioned "Conclusion," the Supreme Court wrote, "Because Appellant [Ms. Argoe] failed to timely and properly challenge the probate court's orders, they are presumed valid. Based on these valid orders, we find that Respondent's conduct toward Appellant was lawful, justified, and reasonable." In this court's view, the Respondent in Argoe II was in the same position as Three Rivers and the employees of Three Rivers.

Following Argoe II, Ms. Argoe was granted permission to amend her Complaint so as to assert medical negligence (malpractice). She lodged that assertion against Dr. Steiner, in addition to Three Rivers Behavioral Health, LLC, Dr. Bryant-Mobley, and Dr. Dodds. The court recognizes, for purposes of the *res judicata* evaluation, that the Plaintiff's legal theory of recovery is now medical malpractice, not false imprisonment, defamation, or intentional infliction of emotional distress.

Dfsc #6

DISCUSSION

Ms. Argoe has retained various experts related to the amended Complaint, and the court has reviewed the depositions that were supplied at the argument on summary judgment. The court has also considered the well-stated arguments of counsel, all briefs submitted, the pleadings, and the other written submissions in the file. Basically, in the light most favorable to the Plaintiff, her experts are saying that Ms. Argoe should never have been have been involuntarily committed and that it was negligent to keep her against her will, particularly for the length of time that she was kept. However, her primary expert, Dr. Davis, acknowledged on

several occasions that he did not complain about an initial detention of Ms. Argoe for up to a couple of days to evaluate her, based on the record.

Typically, any inconsistency in a witness' testimony such as this with Dr. Davis would require the court to defer to a fact finder to resolve the inconsistencies. However, this case is a medical malpractice case. It requires expert opinion to establish the standard of care, the deviation from the standard, and (at least to some extent) the damages that proximately flow from that deviation.

This court is not able to reconcile the rulings of the Supreme Court in Argoe II with the assertions that the involuntarily commitment and treatment of Ms. Argoe by Dr. Steiner constituted medical malpractice. This court accepts the argument of the Defendant that he is entitled to a determination that it is *res judicata* and the law of this case that the commitment process was "lawful, justified, and reasonable." In the court's view, the elements of *res judicata* are satisfied in this medical malpractice case.

WPR #7

The only evidence related to Dr. Steiner is that he conducted an initial evaluation of the Plaintiff at Aurora, following a determination by Dr. Hooker that emergency admission was necessary. It was Dr. Hooker at Orangeburg Mental Health who issued the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44–17–410(2). Dr. Hooker had the Plaintiff transferred to Aurora. Dr. Steiner estimated a ten-day length of stay for the involuntary commitment. He noted in his records that he would speak with her son (whom she trusted) the following day. However, because her health insurance (Carolina Care Plan) would not cover her stay at Aurora, Plaintiff was transferred out of Aurora the next day (June 9, 2005) to Three Rivers Behavioral Health Center

in Lexington County. Dr. Steiner did not participate in any treatment of the Plaintiff before her arrival at Aurora or after her departure for Three Rivers.

Neither Aurora nor Dr. Steiner had any connection with Three Rivers. Ms. Argoe refused all medication while she was at Aurora. So, the only evidence alleged against Dr. Steiner dealt with his initial assessment and, at most, the 26 ½ hours that the plaintiff might have been considered to be under his care at Aurora.

The Supreme Court ruled in Argoe II that "[Ms. Argoe] is procedurally barred from challenging the validity of the underlying orders," including and expressly noting the June 21, 2005, continued commitment order. Id. at 470, 710 S.E.2d at 71. Furthermore, "[Ms. Argoe is] precluded from collaterally attacking the underlying commitment orders." Id. At 471, 710 S.E.2d at 72. These findings by the Supreme Court are the established law of this case. It has been judicially determined that Ms. Argoe's commitment through June 21, 2005, was valid. Dr. Steiner's association with Ms. Argoe ended long before June 21.

Dr. Steiner was legally obligated to perform the initial assessment of the Plaintiff pursuant to the Probate Court's Order. The only evidence in this record is that all of Dr. Steiner's actions were undertaken pursuant to the Order. He did not have the option to disregard the Order of the Probate Court. Dr. Steiner was serving as an arm of the judiciary and he is immune from any act or omission performed within the scope of the Probate Court Order, subject to the caveat discussed below.

Aside from the *res judicata* issue, the court has considered whether there is any evidence that would allow a medical negligence claim to survive against Dr. Steiner. In Vaughan v. McLeod Regional Medical Center, 372 S.C. 505, 642 S.E.2d

744 (2007), the court discussed absolute, quasi-judicial immunity to physicians and mental health facilities acting within the scope of judicial directives in an involuntary commitment setting. It is the ruling of this court that Dr. Steiner is entitled to partial summary judgment for any acts or omissions that were within the scope of judicial directives in an involuntary commitment proceeding. The inquiry then turns to the determination of the extent of protection and to a determination of what falls within the borders of the scope of judicial directives.

The last full paragraph in Vaughan, before the Conclusion section, reads: "**We must determine from the nature of Dr. [ ]'s actions, not merely by his status as a court-appointed examiner, whether the absolute quasi-judicial immunity extends to the challenged acts in this case.**" [Emphasis added.]

WPL #4

This court accepts the argument of Plaintiff's counsel that a medical professional is not entitled to blanket immunity for acts of malpractice simply because the patient initially came to be treated as a result of involuntary commitment proceedings. Vaughan acknowledges that concept in the quotation above. So, this court accepts that a malpractice claim may be raised, even when the patient came into contact with the medical provider because of an involuntary commitment proceeding. Logically, the determination of whether the claim can survive depends on a case-by-case evaluation.

Here, the court finds that the only reasonable reading of this record, in light of Argoe II, is that the Plaintiff is precluded from recovering for acts or omissions of Dr. Steiner.[1] Despite the stringent standards applicable to summary judgment

[1] The court has previously granted summary judgment related to acts or omissions of others that took place up to and including those that occurred on June 21, 2005.

decisions, there do not appear to be genuine issues of material fact related to whether and to what extent the Plaintiff can recover for alleged acts of malpractice associated with the continued hospitalization and treatment authorized by Dr. Steiner.

A medical negligence action requires the plaintiff to provide evidence that the physician departed from the recognized and generally accepted standards followed by competent practitioners in the physician's field under same or similar circumstances. Melton v. Medtronic, Inc., 389 S.C. 641, 655, 698 S.E. 2d 886, 893 (2010). The plaintiff must provide evidence that deviations from the standard practice and procedures were the proximate cause of the plaintiff's alleged injuries. Id. Here, Dr. Steiner was only involved in the initial assessment of the Plaintiff after her referral to Aurora by another doctor and pursuant to a valid commitment order of the Probate Court. Plaintiff's expert admitted in his deposition that he could not find fault for a period of a couple of days for the initial observation and investigation of the Plaintiff and the allegations that her family made. Since the only evidence is that Dr. Steiner's involvement occurred entirely within the window of that "couple of days," there is no expert testimony to support the Plaintiff's contention that Dr. Steiner breached the standard of care. Therefore, no genuine issue of material fact exists to show that Dr. Steiner deviated from standard practices and procedures, nor that his initial assessment proximately caused any injury to the Plaintiff.

Wpa #10

CONCLUSION

This Court grants Summary Judgment to Dr. Steiner on the Plaintiff's medical negligence claim. The grant of summary judgment is based on the

determination that there is no evidence that Dr. Steiner was acting outside the ambit of the Probate Court Order during the commitment of the Plaintiff. There were orders issued before and after Dr. Steiner dealt with the Plaintiff. There is also no evidence that would allow the Plaintiff to overcome the quasi-judicial immunity afforded to a physician in these circumstances. There is no expert evidence of a deviation from the standard of care by Dr. Steiner, nor any evidence that any alleged deviation proximately caused recoverable damages to the Plaintiff.

THEREFORE, IT IS ORDERED that summary judgment be granted to Dr. Steiner and all claims against him are hereby dismissed.

IT IS SO ORDERED.

Judge William P. Keesley
Eleventh Judicial Circuit

March 19, 2014

#11

ORIGINAL

11

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

11th JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 07-CP-32-1981

FILED

2014 MAR -7 A 11: 00

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Martha Lewin Argoe,

Plaintiff,

vs.

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc. its successor, Phyllis Bryant-Mobley, MD, Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan

Defendants.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS THREE RIVERS BEHAVIORAL HEALTH, LLC, PHYLLIS BRYANT-MOBLEY, MD, AND CHERYL C. DODDS, MD

SC Court of Appeals

Wll #1

Summary judgment motions filed by five of the defendants in this case were argued on August 29, 2013, with additional submissions provided on October 7, 2013. This Order GRANTS in part and DENIES in part the motions for summary judgment filed by Defendants Three Rivers Behavioral Health, LLC ("Three Rivers"), Dr. Phyllis Bryant-Mobley ("Dr. Bryant-Mobley"), and Dr. Cheryl C. Dodds ("Dr. Dodds"). All of the other named parties in the Second Amended Complaint have been dismissed from this lawsuit. Dr. David A. Steiner and Nurse Ann Burrell were dismissed previously by orders granting summary judgment in their favor. The Court has been informed and is aware that Plaintiff, Ms. Argoe, separately dismissed Psychiatric Solutions, Inc., Aiken Regional Medical Center-Aurora Pavilion, and Carolina Care Plan from the lawsuit.

This final order follows a memorandum order forwarded on October 8, 2013. The Court grants summary judgment in favor of Defendants Three Rivers Behavioral Health,

LLC, Dr. Phyllis Bryant-Mobley, and Dr. Cheryl C. Dodds on Ms. Argoe's sole remaining claim for medical malpractice for any conduct or treatments that took place on or before June 21, 2005. Summary judgment is denied for any claims alleged to have occurred between the entry of the Probate Court's order of June 21, 2005 and the discharge of the plaintiff from in-patient treatment on July 20, 2005. As described in more detail below, the only claims of malpractice that can be pursued are those alleged to have occurred between the entry of the Probate Court's order of June 21, 2005 and the discharge of the plaintiff from in-patient treatment on July 20, 2005.

BACKGROUND FACTS

The background facts were established in the published opinion of the South Carolina Supreme Court in the case of Argoe v. Three Rivers Behavioral Health, L.L.C., et al., 392 S.C. 462, 710 S.E.2d 67 (2011) (Argoe II). Pursuant to S.C. Code Ann. § 44-17-410, Ms. Argoe's husband "filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005." Id. at 466, 710 S.E.2d at 69. "On June 6, 2005, Probate Court Judge Pandora L. Jones-Glover issued an Order of Detention that referenced section 44-17-430 of the South Carolina Code and provided that an 'officer of the peace take the person[, Ms. Argoe,] alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician.'" Id. "On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated [Ms. Argoe] at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44-17-410(2) of the South Carolina Code." Id. at 466, 710 S.E.2d at 70. Dr.

Hooker felt that Ms. Argoe was demonstrating manic symptoms and was putting herself at risk of harm in that she showed no insight or awareness as to the risks of her behavior nor did she have insight into the problems she was causing her family. Therefore, based on his assessment, Dr. Hooker was of the opinion within a reasonable degree of medical certainty that Ms. Argoe possessed a substantial risk of physical harm to herself and that involuntary emergency hospitalization was necessary.

For these reasons, Ms. Argoe was referred to the Aurora Pavilion at Aiken Regional Medical Center for involuntary emergency admission. Id. After Dr. Hooker's evaluation, emergency commitment papers were prepared which authorized the hospitalization of Ms. Argoe at the Aurora Pavilion.

WPL #3

"On June 9, 2005, due to health insurance constraints, [Ms. Argoe] was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (Three Rivers)." Id. at 467, 710 S.E.2d at 70. This transfer to Three Rivers was under the jurisdiction of the probate court as a result of the commitment order for Ms. Argoe. "Based on her initial psychiatric evaluation, which was conducted by [Defendant] Dr. Phyllis Bryant-Mobley, a provisional diagnosis was made that [Ms. Argoe] was suffering from bipolar disorder with manic and psychotic features." Id. (underlined emphasis in original). At that time, Defendant Bryant-Mobley determined that Ms. Argoe's global assessment of functioning (GAF) score was 25, which indicated behavior considerably influenced by delusions and impairment in judgment. Additionally, internist Dr. Nehal Desai evaluated Ms. Argoe at Defendant Bryant-Mobley's request and also found symptoms consistent with paranoid ideation and bipolar disorder.

"On June 13, 2005, [after a motion to change venue from the Orangeburg County Probate Court,] Darlington County Probate Court Judge Marvin Lawson issued an Order for Continued Hospitalization and for Hearing to be held on June 21, 2005." Id. at 467, 710 S.E.2d at 70. Also, on June 13, 2005, "Judge Lawson appointed Dr. Bryant-Mobley and Doris Ann Burrell, a registered nurse, as designated examiners." Id. "On June 14, 2005, [Ms. Argoe] was notified of the hearing and the name of her court-appointed counsel." Id.

On June 21, 2005, pursuant to her appointment as an examiner, Dr. Bryant-Mobley presented her findings concerning Plaintiff's mental health to Judge Lawson. At the hearing, Judge Lawson also considered the testimony of Ms. Argoe's family members, including testimony from her brother and her sister, and the testimony of the court-appointed designated examiners: Dr. Bryant-Mobley and Nurse Burrell. After considering testimony from Dr. Bryant-Mobley, Nurse Burrell, and Ms. Argoe's family members, Judge Lawson found that Ms. Argoe was mentally ill, and "because of her mental condition lacks sufficient insight or capacity to make responsible decisions with respect to her treatment, and because of her condition, there is a likelihood of serious harm to self or others," He ordered Ms. Argoe committed to a mental health facility for in-patient care and treatment, and following this, that Ms. Argoe undergo an out-patient treatment program for a period not to exceed 12 months. (quoting from Judge Lawson's Order dated June 21, 2005.) The Court retained jurisdiction over Ms. Argoe to insure compliance with the Order.

Because Ms. Argoe was refusing medications, on June 13, 2005, Defendant Bryant-Mobley asked for a second opinion and consulted with Dr. Heath, the medical

director of the hospital, as to the appropriateness of forced medication administration in Ms. Argoe's situation. Dr. Heath personally evaluated Ms. Argoe on June 14, 2005, and specifically noted her continued paranoia and hypomanic mood.

Defendant Bryant-Mobley provided care and treatment to Ms. Argoe at Three Rivers until June 27, 2005, when co-Defendant Dr. Cheryl Dodds assumed Ms. Argoe's care. Ms. Argoe ultimately consented to taking her prescribed medications beginning on or about June 16, 2005. "On July 20, 2005, [Ms. Argoe] was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her prescribed medication." Id. at 468, 710 S.E.2d at 70. Defendant Dodds' discharge diagnosis was "bipolar disease, manic with psychosis," which was consistent with Ms. Argoe's initial diagnoses recorded by other evaluating and treating physicians. See Id. (underline emphasis in original).[1]

WPM #5

The legal proceedings in this case are extensive. After completing her court ordered, one-year outpatient treatments, Ms. Argoe filed her first claims in Beaufort County on August 15, 2006 (C/A No. 2006-CP-07-2013). Ms. Argoe filed the present action against her caregivers and treatment facilities in Lexington County on June 6, 2007. The Beaufort action was subsequently consolidated into the Lexington action in September/October, 2007. Ms. Argoe appealed two prior grants of summary judgment motions against her to the Supreme Court. These two appeals resulted in two

[1] The Court notes that the diagnosis of Ms. Argoe's mental disorder did not substantially change prior to or after the determination by the Probate Court that Ms. Argoe was mentally ill and in need of involuntary commitment. On June 9, 2005, Dr. Steiner diagnosed Ms. Argoe with psychosis, not otherwise specified, rule out bi-polar mania with psychotic features and rule out delusional disorder. Upon her admission to Three Rivers, Dr. Bryant-Mobley's provisional diagnosis was "Bi-Polar 1, Manic with Psychotic Features, rule out OCD." Dr. Desai also diagnosed her with behavior which was consistent with bi-polar disorder. Dr. Dodds discharged Ms. Argoe with a finding of "Bi-Polar 1, Manic with Psychosis." After her discharge and during her continued, court ordered out-patient treatments at Coastal Empire, Ms. Argoe's admitting diagnosis was Bi-Polar mania with psychotic features. This working diagnosis did not change when Ms. Argoe was subsequently discharged from the out-patient treatment program at Coastal Empire on August 7, 2006.

published opinions: Argoe v. Three Rivers Behavior Center and Psychiatric Solutions, Its Successor, et al., 388 S.C. 394, 697 S.E.2d 555 (2010), reh'g den. (Sept. 2, 2010) (Argoe I) (finding no attorney-client relationship between Ms. Argo and the attorney for Ms. Argoe's Husband and Son, where the Son held Ms. Argoe's durable power of attorney); and Argoe II (referenced above) (upholding the underlying involuntary commitment proceedings and upholding the grant of summary judgment on various cases of action in favor of Psychiatric Solutions, the successor owner of the Three Rivers facility).

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, __, 671 S.E.2d 79, __ (2008) (citations omitted). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c); see also Helms Realty, Inc. v. Gibson-Wall Co., 363, S.C. 334, 611 S.E.2d 485 (2005). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. Bravis v. Dunbar, 449 S.E.2d 495 (Ct. App. 1994); Dickert v. Metropolitan Life Ins. Co., 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct. App. 1991), (citations omitted), rev'd in part on

other grounds (311 S.C. 218, 428 S.E.2d 700 (1993)). To withstand a motion for summary judgment the non-moving party must submit evidence of a genuine issue of material fact. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

DISCUSSION

Based on the record and the Supreme Court's decision in Argoe II, the involuntary commitment under the applicable Probate Code statutes is "presumed valid" and cannot now be challenged. Argoe II 392 S.C. at 476, 710 S.E.2d at 75. Any attempt now to challenge the underlying commitment orders and the Court's finding that Ms. Argoe was mentally ill and in need of continued in-patient and out-patient psychiatric treatments is untimely and also barred by *res judicata.* It is from this established framework that the discussion on the underlying summary judgment motions starts. This is the same starting point that the Supreme Court used when evaluating the claims in the Argoe II case.

WPL #7

After determining that the underlying commitment was valid, the court in Argoe II addressed whether Judge McMahon properly granted summary judgment on three previously alleged causes of action for false imprisonment, defamation, and intentional infliction of emotional distress. The Supreme Court upheld the dismissal of those claims, summarizing in the final section captioned "Conclusion," that "[b]ecause [Ms. Argoe] failed to timely and properly challenge the probate court's orders, they are presumed valid. Based on these valid orders, we find that Respondent's conduct toward Appellant was lawful, justified, and reasonable." In this court's view, the

Respondent[2] in Argoe II was in the same position as Three Rivers, its employees, and the private physicians treating Ms. Argoe at Three Rivers.

Following Argoe II, Ms. Argoe was granted permission to amend her Complaint to assert the cause of action for medical negligence. She lodged that assertion against all three of the remaining defendants: Three Rivers Behavioral Health, LLC, Dr. Bryant-Mobley, and Dr. Dodds. The court recognizes, for purposes of the *res judicata* evaluation, that the plaintiff's sole legal theory of recovery is now medical malpractice, not false imprisonment, defamation, or intentional infliction of emotional distress.

Ms. Argoe has retained various experts related to the amended Complaint, and the court has reviewed the depositions that were supplied at the argument on summary judgment. The court has also considered the well-stated arguments of counsel, all briefs submitted, the pleadings, and the other written submissions in the file. Basically, in the light most favorable to the plaintiff, her experts are saying that Ms. Argoe should never have been have been involuntarily committed and that it was negligent to keep her against her will, particularly for the length of time that she was kept. However, her primary expert, Dr. Davis, acknowledged on several occasions that he did not complain about an initial detention of Ms. Argoe for up to a couple of days to evaluate her, based on the record.

Typically, any inconsistency in a witness' testimony such as this with Dr. Davis would require the court to defer to a fact finder to resolve the inconsistencies. This case is a medical malpractice case. It requires expert opinion to establish the standard of care, the deviation from the standard, and (at least to some extent) the damages that

[2] Psychiatric Solutions, Inc., the successor owner of the Three Rivers facilities.

proximately flow from that deviation. See Linog v. Yampolsky, 376 S.C. 182, 656 S.E.2d 355 (2008).

This court is not able to reconcile the rulings of the Supreme Court in Argoe II with the assertions that the involuntarily commitment of Ms. Argoe constituted medical malpractice. This court accepts the argument of the remaining three defendants that they are entitled to a determination that it is *res judicata* and the law of this case that the commitment process was "lawful, justified, and reasonable." In the court's view, the elements of *res judicata* are satisfied in this medical malpractice case.

The court finds that the reasoning announced in Vaughan v. McLeod Regional Medical Center, 372 S.C. 505, 642 S.E.2d 744 (2007), would extend to grant absolute, quasi-judicial immunity to physicians and mental health facilities acting within the scope of judicial directives in an involuntary commitment setting. In Vaughn, the Supreme Court gave the appointed physician absolute quasi-judicial immunity from claims arising from a clinical finding of incompetency. In discussing common-law immunity, the Court stated:

> Because one of the guardian's roles is to act as a representative of the court, and because this role can only be fulfilled if the guardian is not exposed to a constant threat of lawsuits from disgruntled parties, a finding of quasi-judicial immunity is necessary. Such a grant of immunity is crucial in order for guardians to properly discharge their duties. The immunity to which guardians ad litem are entitled is an absolute quasi-judicial immunity.

Vaughn at 511-12, 642 S.E.2d at 748 (citation omitted). The Vaughn case agrees with the U.S. Supreme Court that "[c]ourt appointed examiners are essentially an arm of the judiciary." Id. at 512, 642 S.E.2d at 748 (citing Briscoe v. LaHue, 460 U.S. 325, 335, 103. S.Ct. 1108, 1115-16 (1983) "The common law provided absolute immunity from

subsequent damages liability for all persons—governmental or otherwise—who were integral parts of the judicial process.") The Vaughn court pointed out the clear public policy quandary that "[i]f court-appointed examiners in guardianship proceedings are not afforded immunity, the exposure to liability will have a chilling effect on future acceptances of such appointments." Vaughn at 512, 642 S.E.2d at 748. Therefore, South Carolina follows the rule that "a physician, who is a court-appointed examiner in a guardianship proceeding, has absolute quasi-judicial immunity for actions and opinions within the scope of the appointment." Id.

Therefore, it is the ruling of this court that Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds are entitled to partial summary judgment for any acts or omissions that were within the scope of judicial directives in an involuntary commitment proceeding. This ruling is based upon and supported by Argoe II and the final ruling by Judge Lawson that Ms. Argoe was adjudicated mentally ill and in need of psychological treatment. The difficulty then becomes defining the scope of the quasi-judicial immunity and determining what falls within the borders of judicial directives.

WBL #10

After finding that a court-appointed physician in South Carolina has absolute quasi-judicial immunity for actions and opinions within the scope of the appointment, the Vaughn court started the last full paragraph before the "Conclusion" section with the direction that "[the Court] must determine from the nature of [the appointed physician's] actions, not merely by his status as a court-appointed examiner, whether the absolute quasi-judicial immunity extends to the challenged acts in this case." Id. at 513, 642 S.E.2d at 748. That is, in this Court's view, while Vaughn clearly confirms that quasi-judicial immunity applies to all court-appointed examiners and medical professionals,

the duration of the immunity may be limited by the facts in a particular case. A medical professional or medical facility is not entitled to blanket immunity for acts of malpractice simply because the patient came to be treated as a result of involuntary commitment proceedings. This court accepts that under the correct circumstances, a malpractice claim may be raised, even when the patient came into contact with the medical provider because of an involuntary commitment proceeding. Logically, the determination of whether the claim can survive depends on a case-by-case evaluation.

In this case the Court finds that the only reasonable reading of this record, in light of Argoe II and Judge Lawson's order, is that Ms. Argoe is precluded from recovering for acts and omissions alleged of Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds, up to and including those that occurred on June 21, 2005. In addition, because on June 21, 2005, the Court found Ms. Argoe mentally ill and in need of in-patient and out-patient psychiatric treatments, these Defendants are entitled to absolute quasi-judicial immunity regarding the diagnosis of mental illness, and Ms. Argoe is precluded from recovering for an alleged misdiagnosis of mental illness by these Defendants from June 22, 2005, to Ms. Argoe's discharge on July 20, 2005.

WAL #11

Due to the stringent standards applicable to summary judgment decisions, there appear to be genuine issues of material fact related to whether and to what extent the plaintiff can recover for alleged acts of malpractice associated with the continued in-patient hospitalization and treatment for the period from June 21, 2005, through the date of Ms. Argoe's subsequent discharge from in-patient care on July 20, 2005. This Court takes no position regarding the sufficiency of any claims for medical negligence that Ms. Argoe may argue occurred during the continued in-patient treatment. However, the

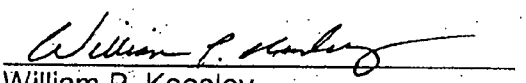
Court does find that the Supreme Court has already determined in Argoe II, and thus it is another established fact in this case, that the plaintiff voluntarily consented to taking her prescribed medications when she was released to out-patient care on July 20, 2005.[3] Therefore, to the extent that there may be any claim against Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds for acts or omissions occurring *after* July 20, 2005, the court finds that the only reasonable reading of this record is that the plaintiff cannot recover for any such conduct.

THEREFORE, IT IS ORDERED that Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds are GRANTED partial summary judgment so that they cannot be held liable for any acts or omissions that occurred prior to the issuance of the Probate Court's order on June 21, 2005, nor for any acts or omissions that occurred *after* the discharge of the plaintiff from in-patient treatment on July 20, 2005.

#12

IT IS FURTHER ORDERED that subject to the above stated findings and rulings, summary judgment is DENIED regarding the time period of Ms. Argoe's continued in-patient commitment from June 22, 2005, to July 20, 2005. At trial, Ms. Argoe may attempt to prove medical negligence by the remaining Defendants, Three Rivers, Dr. Bryant-Mobley, and Dr. Dodds, regarding their treatment of Ms. Argoe's mental illness during the continued in-patient commitment period only.

AND IT IS SO ORDERED.



William P. Keesley
Circuit Judge

March 6, 2014

[3] The court understands that the record includes assertions that Ms. Argoe eventually voluntarily took medications while receiving in-patient treatment, but her deposition creates a genuine issue of material fact as to whether this was the result of coercion. The court also recognizes that the opinion in Argoe II can be read as finding that the plaintiff voluntarily took some medications while receiving in-patient treatment. Again, since it does not appear to be definitive, the proper course of action, in this court's view, is to deny summary judgment in part at this stage.

ORIGINAL

(9)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) 11th JUDICIAL CIRCUIT

FILED
2014 MAR 21 A 10: 33
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Martha Lewin Argoe,) CIVIL ACTION NUMBER: 07-CP-32-1981

Plaintiff,

vs.

Three Rivers Behavioral Center and Psychiatric Solutions, Its Successor; Phyllis Brant-Mobley, MD; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan

Defendants.

ORDER GRANDING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT DORIS ANN BURRELL, RN

Five named defendants in the above-referenced matter filed motions for summary judgment, which were argued before me on August 29, 2013. This order grants the motion for summary judgment in favor of Defendant Doris Ann Burrell, RN (hereinafter "Nurse Burrell") as I find her protected by qualified judicial immunity and there is no genuine issue of material fact that would overcome the grant of immunity.

WPL #1

BACKGROUND FACTS

This is a medical malpractice claim arising from the involuntary commitment of Plaintiff in June of 2005. The South Carolina Supreme Court has ruled already on two appeals filed by the Ms. Argoe, the Plaintiff, in this case. The second reported appellate decision sets forth the factual background upon which I rely in part.

> Pursuant to section 44–17–410 of the South Carolina Code, [Ms. Argoe's] husband (Husband) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005.

On June 6, 2005, Probate Court Judge Pandora L. Jones–Glover issued an Order of Detention that referenced section 44–17–430 of the South Carolina Code and provided that an "officer of the peace take the person [Ms. Argoe] alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician."

On June 7, 2005, deputies with the Orangeburg County Sheriff's Department transported [Ms. Argoe] to the emergency room of The Regional Medical Center of Orangeburg (TRMC). At 3:35 p.m., [Ms. Argoe] was given a physical and mental evaluation. [Ms. Argoe] was discharged at 5:13 p.m. with a diagnosis of "Altered Mental Status" and instructions for her to return the following day for further evaluation. Subsequently, [Ms. Argoe]was driven home by law enforcement.

On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated [Ms. Argoe] at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44–17–410(2) of the South Carolina Code. In this document, Dr. Hooker certified that inpatient psychiatric hospitalization was medically necessary for [Ms. Argoe] and identified Aurora Pavilion Behavioral Health Services (Aurora), a division of the Aiken Regional Medical Center, as the facility that would accept [Ms. Argoe] for further treatment. [Ms. Argoe's] medical records verify that she was involuntarily admitted to that facility on June 8, 2005 at 5:45 p.m. An attending physician at Aurora completed the requisite Physician Certification form stating that he certified that "the inpatient psychiatric hospital admission was medically necessary for psychiatric treatment, which could reasonably be expected to improve the patient's condition."

WPL #2

On June 9, 2005, due to health insurance constraints, [Ms. Argoe] was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (Three Rivers). Based on her initial psychiatric evaluation, which was conducted by Dr. Phyllis Bryant–Mobley, a provisional diagnosis was made that [Ms. Argoe] 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, [after a motion to change venue from the Orangeburg County Probate Court, the] 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 [Ms. Argoe's] mental health. [Ms. Argoe] 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 [Ms. Argoe's] treating physicians at Three Rivers, to examine [Ms. Argoe] as to whether she needed a guardian and/or a conservator. Although Dr. Dodds believed [Ms. Argoe] to be an "incapacitated person" and in need of a guardian/conservator, she could not definitively determine whether [Ms. Argoe's] condition was temporary or permanent.
>
> On July 20, 2005, [Ms. Argoe] was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her pre-scribed medication. Dr. Dodds's discharge diagnosis was "bipolar disease, manic with psychosis."

Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 465-68, 710 S.E2d 67, 69-70 (2011) (Argoe II) (underlined emphasis in original; internal footnotes omitted). Pursuant to the June 21, 2005, Order from Probate Judge Lawson, Ms. Argoe completed her one-year of out-patient therapy around July/August 2006. Soon after completing her outpatient treatment, Ms. Argoe commenced litigation.

Wpl #3

Nurse Burrell, the only nurse at Three Rivers specifically named in Ms. Argoe's lawsuit, had limited contact with Ms. Argoe. After being appointed by the Probate Court as the second designated examiner by order dated June 10, 2005, Nurse Burrell reviewed the then-existing records, conducted interviews, and issued her examination report on June 15, 2005. Nurse Burrell's recommendations were similar to the conclusions of Dr. Phyllis Mobley, the physician designated examiner who issued her report to the Probate Court on June 16, 2005. The reports from the two designated examiners, together with other information, were reviewed by Probate Judge Lawson at a continued commitment hearing that was conducted on June 21, 2005. Nurse Burrell filled out no additional paperwork and had no other contact with Ms. Argoe after the

June 21, 2005 hearing when Probate Judge Lawson ordered Ms. Argoe to continue her in-patient treatment and, upon discharge, complete twelve months of out-patient psychiatric treatment.

The Supreme Court ruled in Argoe II that "[Ms. Argoe] is procedurally barred from challenging the validity of the underlying orders," including and expressly noting the June 21, 2005, continued commitment order. Id. at 470, 710 S.E.2d at 71. Furthermore, "[Ms. Argoe is] precluded from collaterally attacking the underlying commitment orders." Id. At 471, 710 S.E.2d at 72. These findings by the Supreme Court are the established law of this case.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, __, 671 S.E.2d 79, __ (2008) (citations omitted). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." Gauld, at __, 671 S.E.2d at (citations omitted). To withstand a motion for summary judgment the non-moving party must submit evidence of a genuine issue of material fact. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

WPL #4

"A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Gauld, at __, 671 S.E.2d at __ (citations omitted). A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the

time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. Guinan v. Tenet Healthsystems of Hilton Head, 383 S.C. 48, 54-55, 677 S.E.2d 32, __ (2009):

DISCUSSION

As noted above, it is an established fact in this case that Ms. Argoe was lawfully involuntarily committed pursuant to South Carolina's emergency commitment statutes. Nurse Burrell was the second, and non-physician, designated examiner appointed by the Probate Court in an order dated June 10, 2005. The first designated examiner appointed by the Probate Court was Dr. Mobley. I find that the record and the deposition of Nurse Burrell reflect that her only involvement with Ms. Argoe was serving as the second appointed designated examiner in the involuntary commitment proceedings. After the final Probate Court Hearing and Order of Continued Treatment by Probate Judge Lawson on June 21, 2005, Nurse Burrell had no additional involvement with the care or treatment of Ms. Argoe.

Based on the rulings already issued by the Supreme Court in Argoe II, Ms. Argoe cannot now attempt to collaterally attack the underlying commitment orders. Since Nurse Burrell was at all times acting under the authority of and during the pendency of the Probate Court proceedings, she is entitled to quasi-judicial immunity. That is, as a matter of law, there is no issue of material fact that would allow Ms. Argoe to overcome the grant of quasi-judicial immunity in favor of Nurse Burrell in this case.

"Court-appointed examiners are essentially an arm of the judiciary," and "quasi-judicial immunity for acts performed within the scope of appointment is necessary to protect the court-appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the guardianship proceedings." Vaughn v. McLeod Regional Medical Center, 372 S.C.

505, 512, 642 S.E.2d 744, 748 (2007). The Vaughn case is directly on point regarding the claims alleged by Ms. Argoe versus Nurse Burrell. In Vaughn, the Supreme Court upheld the grant of quasi-judicial immunity to a physician who was appointed by the Probate Court and made the alleged incorrect diagnosis that Mr. Vaughn was an "incapacitated person." The Supreme Court cautioned that "[i]f court-appointed examiners in guardianship proceedings are not afforded immunity, the exposure to liability will have a chilling effect on future acceptances of such appointments." Vaughn, at 512, 642 S.E.2d at 748. Indeed, this is "precisely why absolute quasi-judicial immunity must be extended to court-appointed examiners in guardianship proceedings." Id. at 513, 642 S.E.2d at 748-749.

In the present action, the probate court, pursuant to the South Carolina Code of Laws regarding involuntary commitment proceedings, appointed Dr. Phyllis Brant-Mobley and Nurse Burrell to act as the mental health examiners for Plaintiff. The designated examiner reports as well as other information were reviewed by Probate Judge Marvin Lawson before he issued the June 21, 2005, Order for Continued Treatment. The Supreme Court has already determined that there was a substantial basis for the continued involuntary, in-patient treatment of Plaintiff.

WPE #6

> Additionally, we disagree with [Ms. Argoe's] assertion that her involuntary commitment was without a factual basis. In support of this assertion [Ms. Argoe] directs this Court's attention to numerous documents, including Dr. Leonhardt's consulting opinion dated June 14, 2005, which was requested by Dr. Bryant-Mobley and reviewed by Dr. Dodds. It was indicated in the opinion that [Ms. Argoe's] condition was the result of "marital conflict" as she was an "alleged victim of abuse." Initially, we would note that Judge Lawson presumably took into consideration Dr. Leonhardt's opinion as the court-appointed examiners presented their findings to Judge Lawson during the June 21, 2005 hearing. Furthermore, the remaining documents offered by [Ms. Argoe] are depositions and affidavits that post-date the involuntary commitment proceedings. These after-the-fact documents cannot operate to retroactively invalidate the commitment orders that were procedurally proper and factually substantiated by court-appointed medical personnel. To find otherwise, we would undermine the probate court's authority in involuntary commitment proceedings.

Argoe II at 471, 710 S.E.2d at 72-73. The Supreme Court more succinctly reached the same conclusion when addressing Ms. Argoe's prior claim for defamation. "We find that summary judgment was properly granted to [Psychiatric Solutions, the successor owner of Three Rivers] as any communications issued by Three Rivers' employees were qualifiedly privileged as they were done in effectuating the lawful orders of the probate court." Argoe II, 392 S.C. at 474, 710 S.E.2d at 74. Stated another way, "Three Rivers [and its employees were] entitled to quasi-judicial immunity as it was treating [Ms. Argoe] pursuant to the involuntary commitment order." Id. at 475, 710 S.E.2d at 74.

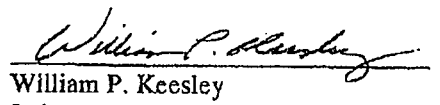
Ms. Argoe asserts that there is a genuine issue of fact created by the deposition of Nurse Burrell concerning her participation as a designated examiner. It is claimed that Nurse Burrell admitted in her deposition that she did nothing to fulfil the duties of designated examiner, but yielded entirely to the opinions of the doctor. Therefore, it is argued that the nurse is not entitled to qualified judicial immunity (or at least there is a genuine issue of fact) because she completely failed to carry out the duties of the position she occupied. While the court is troubled by this question, there does not appear to be a means of reconciling this assertion with the established law of this case.

WPL #7

CONCLUSION

At all relevant times, Nurse Burrell was working within the bounds of the involuntary commitment order issued by the Probate Court. She was specifically appointed as the second, non-physician designated examiner by the Probate Court. Nurse Burrell's involvement with the care and treatment of Ms. Argoe ended when Probate Judge Lawson issued his order on June 21, 2005, for the continued in-patient treatment of Ms. Argoe followed by twelve months of out-patient treatment. Based on the Supreme Court's previous findings that "quasi-judicial immunity

for acts performed within the scope of appointment is necessary to protect the court-appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the guardianship proceedings," I FIND and ORDER that Nurse Burrell shall be dismissed from this action and GRANT her motion for summary judgment.



William P. Keesley
Judge

Lexington, South Carolina
March 19, 2014

#8

ORIGINAL

STATE OF SOUTH CAROLINA)
FILED IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

2014 JUN -9 P 12: 55

Martha Lewin Argoe,)
)
Plaintiff, BETH A. CARRIGG CLERK OF COURT LEXINGTON, SC
)
-vs-) ORDER ON RECONSIDERATION
)
Three Rivers Behavioral Health,)
LLC, et al.,) Case Number 2007-CP-32-01981
)
Defendants.)

The court granted summary judgment in favor of the defendants David A. Steiner, M.D. and Doris Ann Burrell, RN. It also granted partial summary judgment in favor of the defendants Three Rivers Behavioral Health, LLC, Phyllis Brant-Mobley, M.D., and Cheryl C. Dodds, M.D. The plaintiff seeks reconsideration and to have the court alter or amend those orders. The motions are denied.

Upon receiving the motions, the court notified the attorneys that it would decide the issues on written submissions, without further oral argument, pursuant to Rule 59(f), SCRCP. Each party relevant to the motions for reconsideration has now either provided briefs or notified the court that no further submissions are being forwarded.

This is a difficult case, with an extremely protracted history. Each of the attorneys makes very good arguments. Frankly, having reconsidered the matter and recognizing that others (including an appellate court) may view the matters differently, the court does not feel that it can state its reasoning and rulings any better than it has in the memorandum order and the final orders.

Most significantly, this court is not ruling in a vacuum. It has two prior orders from the appellate court which have established certain things that this court feels are binding upon it and the parties. Recognizing the scintilla rule, this court again states that the rulings, particularly those in Argoe II, have a substantial impact upon what can be presented in this case.

As for the *res judicata* issues, the court has acknowledged in the orders that the causes of action here are for medical negligence, which is a different legal theory than the ones previously asserted. The court allowed the plaintiff to make that amendment over the defendants' objections. In considering *res judicata* principles, the citations and authority provided by plaintiff's learned counsel are recognized. The court acknowledges that the parties involved in the appeals are somewhat different, though there is overlap. The underlying factual dispute and alignment of interests have not changed. To the extent that the court applied *res judicata*, it believes that its rulings in that regard have been stated as well as the court knows how to do so. 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. The court sees no new information or arguments in the motions for reconsideration that were not considered and ruled upon in the previous orders.

WAL #2

As for the arguments about the court's evaluation of expert testimony, it is stated in the orders that the record may reflect inconsistency in the testimony of the plaintiff's experts and that those situations normally dictate that the case be allowed to go forward to a fact finder to resolve any factual inconsistency. The plaintiff asserts that the court has misconstrued or misunderstood the testimony of the plaintiff's experts. Having

reconsidered the matter, the court believes that it has accurately stated what the experts said in depositions and that the court has stated why it ruled as it did. Again, the evaluation of the evidence cannot be done in a vacuum here because the Supreme Court has already made findings. The Supreme Court has affirmatively stated that the plaintiff has waived her ability to object to certain things. The higher court has determined that the plaintiff's failure to challenge the probate courts' orders of commitment and continued hospitalization cause those orders to be presumed valid. The Supreme Court has set out a detailed factual history and, in this court's view, has established certain determinations of fact that are binding on this court and the parties. Having reconsidered the matter, this court finds no basis to modify its previous orders regarding its evaluation of the evidence.

As for the arguments related to immunity, the court has reconsidered the situation and sees no basis for altering or amending the prior orders. Basically, the prior orders recognized that the mere fact that a patient was involuntarily committed does not automatically bar a medical negligence claim. As noted previously, this court allowed the complaint to be amended to assert medical negligence. This court has granted partial summary judgment as to three defendants, which allows pursuit of the medical negligence claims against them, albeit that the conduct in question has been reduced to a limited period of time. As stated in the initial memorandum order:

> This court accepts the argument of plaintiff's counsel that a medical professional or medical facility is not entitled to blanket immunity for acts of malpractice simply because the patient came to be treated as a result of involuntary commitment proceedings. . . . So, this court accepts that a malpractice claim may be raised, even when the patient came into contact with the medical provider because of an involuntary commitment proceeding. Logically, the determination of whether the claim can survive depends on a case-by-case evaluation.

Taking the prior rulings that it found to be binding on this court and the parties, a determination was made that the plaintiff can pursue her medical negligence claims against Three Rivers Behavioral Health, LLC, Dr. Bryant-Mobley, and Dr. Dodds for a brief period. This court explained its reasoning that a medical negligence claim can survive summary judgment against these three defendants for the period between entry of the probate court order of continued commitment (which was done on June 21, 2005) to her release from in-patient hospitalization on July 20, 2005. The court reaffirms that ruling.

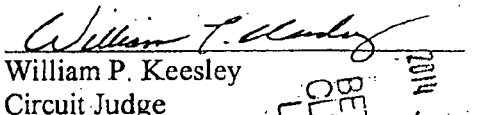
The plaintiff's Brief challenges any finding that Dr. Dodds is entitled to immunity. It is the court's understanding that Dr. Dodds did not begin any involvement with the plaintiff until June 27, 2005. Since the entire time period when Dr. Dodds was involved with the plaintiff falls within the period that the court allowed the plaintiff to pursue a medical negligence claim against her, the court thought it was clear that it was not granting summary judgment in favor of Dr. Dodds on the basis of immunity.

#4

As for the other challenges to the rulings on immunity, the court has reconsidered the arguments and denies the motion to alter or amend.

THEREFORE, IT IS ORDERED that the plaintiff's motions for reconsideration and to alter or amend are denied.

AND IT IS SO ORDERED.



William P. Keesley
Circuit Judge

June 6, 2014

FILED
2014 JUN -9 P 12: 55
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

388 S.C. 394
697 S.E.2d 551
Martha Lewin ARGOE, Appellant,
v.
THREE RIVERS BEHAVIORAL CENTER AND PSYCHIATRIC SOLUTIONS, Its Successor; Phyllis Bryant-Mobley, MD; Glenn Hooker, MD; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III, Defendants,
Of Whom James F. Walsh, Jr. is the Respondent.
No. 26844.
Supreme Court of South Carolina.
Heard March 17, 2010.
Decided July 26, 2010.
Rehearing Denied Sept. 2, 2010.

[697 S.E.2d 552]

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[697 S.E.2d 553]

Charles M. Black, Jr. and Mitchell C. Payne, both of Warner Payne & Black, of Columbia, for Appellant.

M. Dawes Cooke, K. Michael Barfield, and John W. Fletcher, all of Barnwell Whaley Patterson & Helms, of Charleston, for Respondent.

Chief Justice TOAL.

In this case, Martha Lewin Argoe (Appellant) appeals the trial court's order granting summary judgment to Attorney James F. Walsh, Jr. (Respondent). We affirm.

Facts/Procedural Background

Appellant filed the underlying lawsuit against Respondent arising out of his representation of her husband, Lewis M. Argoe, Jr. (Husband), and son, G. Lewis Argoe, III (Son). Although now divorced, Appellant and Husband were experiencing marital difficulties at the time Respondent represented Husband and Son.[1]

Husband and Son entered into an attorney-client relationship with Respondent, informing him that they were seeking his help in protecting Appellant from her own irresponsible and erratic behavior. They told Respondent that Appellant was acting strangely and had become financially irresponsible.[2] Specifically, Husband and Son informed Respondent that Appellant had taken out a loan against a condominium she owned in Beaufort County, South Carolina (the Beaufort Property). Appellant told no one about the loan, allowed it to go into default, and the Beaufort Property was about to enter foreclosure. Respondent learned that Son was Appellant's attorney-in-fact pursuant to a Durable Power of Attorney executed by Appellant on April, 20, 2004.[3] In order to avoid financial disaster, Respondent assisted Son in the transfer of title to the Beaufort Property to a trust for the benefit of Appellant. Son was the residual beneficiary to the trust and would receive legal title to the Beaufort Property in the event of Appellant's death. Pursuant to Appellant's then-existing estate plan, Son was already to receive the property upon her death. Thus, the creation of the trust at issue was consistent with the status quo.

Appellant alleges that Husband orchestrated the transfer of title to the Beaufort Property and her involuntary commitment because he feared she was going to divorce him. Husband and Son maintain these actions were taken to protect Appellant from herself. Respondent understood Husband and Son's motivations to be benevolent and

[697 S.E.2d 554]

there is no evidence in the record to indicate that he had reason to believe otherwise.

On August 15, 2006, Appellant filed an action against Respondent in Beaufort County asserting various causes of action, including setting aside influenced transactions, professional negligence, breach of fiduciary duty, breach of trust, invasion of privacy, intentional infliction of emotional distress, violation of civil rights, conspiracy, conversion, and abuse of process. On June 6, 2007, Appellant filed another action in Lexington County arising out of the same facts and circumstances, but naming additional defendants. The two lawsuits were combined in Lexington County. Respondent filed a motion for summary judgment, which was granted by the trial court as to all causes of action.

Issues

Appellant timely filed a notice of appeal and presents the following issues for review:

> I. Did the trial court err in granting summary judgment because it found no legally cognizable duty owed by Respondent to Appellant?
>
> II. Did the trial court err in granting summary judgment as to Appellant's cause of action for intentional infliction of emotional distress?
>
> III. Did the trial court err in granting summary judgment as to Appellant's cause of action for legal malpractice?
>
> IV. Did the trial court err in granting summary judgment as to Appellant's cause of action for abuse of process?
>
> V. Did the trial court err in granting summary judgment because it found no conflict of interest between Respondent and Appellant?

Standard of Review

Appellate courts review the grant of summary judgment under the same standard applied by the trial court. *Houck v. State Farm Fire & Cas. Ins.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005). Summary judgment is appropriate where there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007).

AnalysisI. Duty

Appellant argues she had an attorney-client relationship with Respondent arising out of his representation of Son. Therefore, Appellant asserts that the transfer of title to the Beaufort County Property without her knowledge breached a duty of care Respondent owed to her. We disagree.

"Generally, 'an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.' " *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006) (quoting *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct.App.1986)). Further, an attorney owes no duty to a non-client unless he "breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

We find that Appellant was not Respondent's client and, therefore, was not owed a duty of care arising from such a relationship. The April 20, 2004 Durable Power of Attorney

executed by Appellant unequivocally appointed Son as her attorney-in-fact to act on behalf of Appellant "in all matters pertaining to [her] care and maintenance." Specifically, Appellant appointed Son to act in her name and gave him broad powers with respect to her estate, including the power to convey real estate.[4] Because Respondent represented

[697 S.E.2d 555]

Son and not Appellant in the Beaufort Property transaction, the only duty of care arising out of that relationship was owed to Son. Thus, we agree with the trial court's finding that Respondent did not owe a duty of care to Appellant.

II. Intentional Infliction of Emotional Distress

Appellant argues that the trial court erred in granting Respondent's motion for summary judgment with respect to Appellant's cause of action for intentional infliction of emotional distress. We disagree.

In order to recover for intentional infliction of emotional distress, a plaintiff must establish:

> 1. The defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
>
> 2. The conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
>
> 3. The action of the defendant caused plaintiff's emotional distress; and
>
> 4. The emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson, 374 S.C. at 356, 650 S.E.2d at 71.

The trial court granted Respondent's motion for summary judgment with respect to Appellant's cause of action for intentional infliction of emotional distress because it found no evidence in the record to suggest that Respondent's conduct was "so extreme and outrageous as to exceed all bounds of decency." *Id.* Appellant argues that Respondent's conduct was sufficiently extreme and outrageous to survive a summary judgment motion because he owed Appellant a duty of care arising out of an attorney-client relationship, thus breaching a duty owed to Appellant. Because we find that Appellant was not owed a duty of care arising out of an attorney-client relationship with Respondent, this argument is without merit. Thus, we affirm the trial court's grant of summary judgment as to Appellant's cause of action for intentional infliction of emotional distress.

III. Legal Malpractice

Appellant argues that the trial court erred in granting Respondent's motion for summary judgment as to the cause of action for legal malpractice. We disagree.

> A plaintiff in a legal malpractice action must establish four elements:
>
> 1. The existence of an attorney-client relationship;
>
> 2. A breach of duty by the attorney;
>
> 3. Damage to the client; and
>
> 4. Proximate cause of the plaintiff's damages by the breach.

Rydde v. Morris, 381 S.C. 643, 647, 675 S.E.2d 431, 433 (2009) (citing *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 435 n. 2, 472 S.E.2d 612, 613 n. 2 (1996)). Appellant cannot satisfy the first element of this cause of action because, as discussed above, there is no evidence in the record to suggest that an attorney-client relationship existed between Respondent and Appellant. Thus, the trial court correctly granted Respondent's motion for summary judgment with respect to the cause of action for legal malpractice.**IV. Abuse of Process**

Appellant argues the trial court erred in granting summary judgment as to her cause of action for abuse of process. We disagree.

[697 S.E.2d 556]

"The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding." *Hainer v. Am. Med. Intern., Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) (citing *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693 (1967)). The abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure for a purpose not intended by the procedure. *Food Lion, Inc. v. United Food Commercial Workers Int'l Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct.App.2002).

We find no evidence in the record to suggest that Respondent had an "ulterior purpose" to his actions, let alone a "willful act in the use of the process not proper in the conduct of the proceeding." *Hainer*, 328 S.C. at 136, 492 S.E.2d at 107. In fact, the record indicates the contrary: Respondent acted with Appellant's best interests in mind, transferring her property to a trust for her benefit so that she might not bring financial harm to herself. Thus, we affirm the trial court's grant of summary judgment as to Appellant's cause of action for abuse of process.

V. Conflict of Interest

Appellant argues the trial court erred in granting summary judgment because there was evidence that Respondent had a conflict of interest with her. We disagree.

Appellant's argument as to conflict of interest is predicated on the assumption that she was Respondent's client for the purposes of the Beaufort Property transaction. For the aforementioned reasons, no such attorney-client relationship existed, thus Appellant's argument is without merit.

Nonetheless, Appellant also argues Respondent had a conflict of interest with her arising out of an alleged self-gift to Son effectuated by the creation of the trust. The logic of this argument is puzzling because even if the creation of the trust effectuated a self-gift to Son a conflict of interest between Respondent and Appellant could not exist absent the existence of an attorney-client relationship. Nonetheless, addressing the argument raised, there is no evidence in the record indicating a self-gift to Son was effectuated by the creation of the trust.

In responding to Appellant's allegations concerning a self-gift to Son, the dissent recognizes "an attorney may be liable to a third party where he conspires with a client against a third." However, the dissent goes too far when it states evidence in the record suggests a conspiracy between Respondent and Son against Appellant, and this evidence is sufficient to survive a motion for summary judgment in this matter.

The record indicates Son retained Respondent to represent him in his capacity as Appellant's attorney-in-fact for the purpose of protecting Appellant's assets. Specifically, Son wanted to protect the Beaufort Property from Appellant's financial irresponsibility, an action permitted pursuant to Appellant's Durable Power of Attorney. The creation of the trust for the benefit of Appellant achieved the goal of protecting the Beaufort Property from Appellant's irresponsible behavior and there is no evidence in the record to suggest the transfer was intended as, or effectively created, a self-

gift to Son. The fact that Son was the named residuary beneficiary of the trust does not compromise the legality of the transfer, or suggest a conspiracy between Son and Respondent. As residuary beneficiary, Son did not obtain legal title to the property and none of the powers that would accompany such an ownership interest. Additionally, naming Son the residuary beneficiary of the trust paralleled Appellant's estate plan and such a decision was presumably made because it mirrored Appellant's desires for the Beaufort Property. Thus, the record does not suggest Son and Respondent engaged in a conspiracy against Appellant resulting in a self-gift to Son, but rather indicates that Son and Respondent intended to protect Appellant's assets from her infirmities while honorably considering her intentions for the property as manifested in her estate plan.

Additionally, the dissent would create a rule that would extend an attorney's liability to those in privity with his or her client. We disagree with this general rule and vehemently oppose its adoption as it would apply

[697 S.E.2d 557]

in this situation. The Durable Power of Attorney at issue in this case was executed by Appellant so that Son could protect her interests from her poor judgment and erratic behavior. This type of arrangement is commonplace and serves a good purpose: the protection of the infirm from their own infirmities. The fact that an infirm principal of a Durable Power of Attorney does not appreciate an action taken by an attorney-in-fact pursuant to the power she willfully gave him, as is the case here, does not create liability for the attorney facilitating a transaction that is called into question.[5] Recognizing a duty owed to a third-party, even one in privity to an attorney's client, would undermine the good and common practice of executing Durable Powers of Attorney that are intended to provide the principal protection from their own infirmities.

For the aforementioned reasons, we find no conflict of interest existed between Respondent and Appellant and that no self-gift was effectuated by the creation of the trust.

Conclusion

Respondent did not owe any duty to Appellant arising out of his representation of Son in the Beaufort Property transaction; thus, the trial court's order granting summary judgment with respect to all causes of action should be affirmed. Additionally, no conflict of interest existed between Respondent and Appellant. Therefore, the trial court's order is affirmed.

BEATTY, KITTREDGE and HEARN, JJ., concur.
PLEICONES, J., dissenting in a separate opinion. Justice PLEICONES.

I respectfully dissent. In my view, there are genuine issues of material fact which preclude summary judgment here.

I agree that, generally, where an individual who holds a power of attorney hires an attorney, that attorney's client is the attorney-in-fact and not the principal who executed the power. *E.g., Estate of Keatinge v. Biddle,* 789 A.2d 1271 (Me.2002). I also agree that, in general, an attorney who acts in good faith with the authority of his client is not liable to a third party for the performance of his professional services. *E.g., Gaar v. North Myrtle Beach Realty, Inc.,* 287 S.C. 525, 339 S.E.2d 887 (Ct.App.1986). However, an attorney may be liable to a third party where he conspires with a client against that third party, *see Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995), or where his professional negligence injures a party in privity with his client. *Gaar, supra.*

In other words, I largely agree with the majority on the applicable law. Where I disagree, however, is with the consequences, at least for the purposes of summary judgment, of respondent's advice and assistance to Son to exercise his authority as Appellant's attorney-in-fact to transfer title to the Beaufort Property

from Appellant's name into a trust. Unlike the majority, I am not persuaded that, because at the time the property was transferred to the trust, Son was also the devisee under Appellant's current will, it can be said that this transfer was, as a matter of law, not a self-gift.[6] Until the transfer of title to the trust, Appellant had the right to dispose of the property during her lifetime or to change her testamentary disposition of the Beaufort Property. Once the trust was established, however, she could no longer dispose of this property during her lifetime or in her will.[7]

[697 S.E.2d 558]

In my opinion, the evidence here is sufficient to withstand respondent's motion for summary judgment on appellant's claims of legal malpractice and conflict of interest. I would reverse.

Notes:

1. The legal issues presented in this case arise out of Respondent's representation of Son. However, Respondent also assisted Husband in the filing of an Application for Involuntary Emergency Hospitalization for Mental Illness, which caused Appellant to be admitted against her will to the South Carolina Department of Mental Health Psychiatric Hospital.

2. In addition to sharing details about Appellant's financially irresponsible behavior, Husband and Son told Respondent that Appellant claimed to be tormented by demons and witches and had become paranoid.

3. Prior to April 20, 2004, Husband was Appellant's attorney-in-fact. Appellant claims she made Son her attorney-in-fact because she feared husband would use this power to harm her.

4. Specifically, by way of the April 20, 2004 Durable Power of Attorney, Appellant empowered Son to:

[A]llot, assign, buy, care for, collect, contract with respect to, continue any business of [hers], convey, convert, endorse, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of [hers], invest, endorse, cash, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for and in general, to exercise all the powers in the management of [her] affairs and estate which any individual could exercise in the management of similar property owned in his own right, upon such terms and conditions as [her] attorney-in-fact may seem best, and to execute and deliver any and all instruments and to carry and to do any and all acts which [her] attorney-in-fact may deem proper or necessary to care for [her] in a manner and to the same degree of comfort to which [she] ha[s] become accustomed to living.

5. To be clear, third-party liability in a situation such as this could arise if it is shown that an attorney "breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." *Onorato,* 318 S.C. at 300, 457 S.E.2d at 602. There is no evidence in the record to support a claim that Respondent acted in any manner that would create liability to third parties, including Appellant.

6. It appears that the majority and I agree that Son's power of attorney did not contain a provision permitting Son to make a gift to himself. *See e.g. Loftis v. Eck,* 288 S.C. 154, 341 S.E.2d 641 (Ct.App.1986).

7. It appears that the trust has been dissolved and fee simple title to the property returned to Appellant as part of a settlement between her and Husband and Son. In my view, while this fact may affect Appellant's damages it does not impact Respondent's potential liability.

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392 S.C. 462
710 S.E.2d 67
Martha Lewin ARGOE, Appellant,
v.
THREE RIVERS BEHAVIORAL HEALTH, L.L.C., Psychiatric Solutions, Inc., Phyllis Bryant–Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center, Aurora Pavilion, David Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN, Carolina Care Plan, James F. Walsh, Jr., G. Lewis Argoe, Jr. and George L. Argoe, III, Defendants,Of whom Psychiatric Solutions Inc. is the, Respondent.
No. 26978.
Supreme Court of South Carolina.
Heard April 20, 2011.Decided May 31, 2011.

[710 S.E.2d 69]

Charles M. Black, Jr., Mitchell C. Payne, of Warner, Payne & Black, of Columbia, for Appellant.Weston Adams, III, Trippett Boineau, III, and Helen F. Hiser, of McAngus Goudelock & Courie, of Columbia, for Respondent.**Justice BEATTY.**

[392 S.C. 465] This case arises out of the involuntary commitment of Martha Lewin Argoe (Appellant) to Three Rivers Behavioral Health, L.L.C., a psychiatric, inpatient facility that was subsequently[392 S.C. 466] purchased by Psychiatric Solutions, Inc.[1] (Respondent). Appellant appeals the circuit court's order granting summary judgment in favor of Respondent as to her causes of action for false imprisonment, defamation, and intentional infliction of emotional distress. We affirm.

I. Factual/Procedural History

Pursuant to section 44–17–410 of the South Carolina Code,[2] Appellant's husband (Husband) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005.

On June 6, 2005, Probate Court Judge Pandora L. Jones–Glover issued an Order of Detention that referenced section 44–17–430[3] of the South Carolina Code and provided that an "officer of the peace take the person [Appellant]

alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician."

On June 7, 2005, deputies with the Orangeburg County Sheriff's Department transported Appellant to the emergency room of The Regional Medical Center of Orangeburg (TRMC). At 3:35 p.m., Appellant was given a physical and mental evaluation. Appellant was discharged at 5:13 p.m. with a diagnosis of "Altered Mental Status" and instructions for her to return the following day for further

[710 S.E.2d 70]

evaluation. Subsequently, Appellant was driven home by law enforcement.

On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated Appellant at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44–17–410(2) of the South Carolina Code. In this document, Dr. Hooker certified that inpatient psychiatric hospitalization was medically necessary for Appellant and identified[392 S.C. 467] Aurora Pavilion Behavioral Health Services (Aurora), a division of the Aiken Regional Medical Center, as the facility that would accept Appellant for further treatment. Appellant's medical records verify that she was involuntarily admitted to that facility on June 8, 2005 at 5:45 p.m. An attending physician at Aurora completed the requisite Physician Certification form stating that he certified that "the inpatient psychiatric hospital admission was medically necessary for psychiatric treatment, which could reasonably be expected to improve the patient's condition."

On June 9, 2005, due to health insurance constraints, Appellant was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (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 [4] 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.[5]

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. [6]

[392 S.C. 468] 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 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."

On June 13, 2007, Appellant filed suit against Husband and her son as well as the hospitals, physicians, and nurses involved in the

involuntary commitment proceedings. Appellant asserted causes of action against Respondent for intentional infliction of emotional distress, false imprisonment, conspiracy, defamation, invasion of privacy, and public disclosure of a private fact.

Respondent filed a motion for summary judgment as to all causes of action with the exception of conspiracy. In support of its motion, Respondent initially claimed that it was not a proper party to the lawsuit as the December 2006 Purchase Agreement required Three Rivers to indemnify Respondent and hold harmless from any and all liabilities occurring before January 1, 2007. Additionally, Respondent claimed that the doctrine of *res judicata* precluded Appellant

[710 S.E.2d 71]

from challenging the validity of the June 6, 2005 commitment order as Appellant failed to appeal this order. Accordingly, Respondent asserted it was justified in relying on the probate court order.

As to Appellant's specific causes of action, Respondent asserted that it was entitled to summary judgment with respect to false imprisonment and intentional infliction of emotional distress because the actions of Three Rivers were based upon the execution of a valid involuntary commitment order of the probate court. In terms of Appellant's claims of defamation and invasion of privacy/public disclosure of a private fact, Respondent contended that any disclosure of Appellant's psychiatric information was authorized and done in [392 S.C. 469] accordance with the judicially-mandated involuntary commitment order and proceedings.

Following a hearing, Circuit Court Judge R. Knox McMahon granted summary judgment to Respondent as to Appellant's claims for false imprisonment, intentional infliction of emotional distress, and defamation.[7]

Appellant appealed Judge McMahon's order to the Court of Appeals. This Court certified this appeal pursuant to Rule 204(b), SCACR.

II. DiscussionA.

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. *Fleming v. Rose,* 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *USAA Prop. & Cas. Ins. Co. v. Clegg,* 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming,* 350 S.C. at 493–94, 567 S.E.2d at 860.

B.

All of Appellant's arguments emanate from the following two theories: (1) the Order of Continued Hospitalization (June 13, 1005) and the Order for Continued Treatment (June 21, 2005) were invalid as they were based on the void initial Order [392 S.C. 470] of Detention (June 6, 2005); and (2) there was no factual basis to substantiate the findings underlying the Order for Continued Treatment (June 21, 2005). Without a "lawful" probate court order, Appellant claims Respondent was not justified in detaining her, no privilege attached to Respondent's communications about Appellant, and it was not reasonable for Respondent to detain her.

As will be discussed, we find that Appellant is procedurally barred from challenging the validity of the underlying orders. Based on the valid orders, we conclude that the circuit court judge correctly granted summary judgment in favor of Respondent.

C.

We find Appellant's challenge to the validity of the underlying commitment orders was not only untimely but also barred by the doctrine of *res judicata.*

On March 25, 2008, Appellant filed a Petition to Vacate Commitment Proceedings. In this Petition, Appellant contended the June 6, 2005 Order of Detention was rendered "invalid" after she was discharged on June 7, 2005 from TRMC of Orangeburg. Because the parties could not "re-use" the June 6, 2005 Order of Detention to transport her to Aurora on June 8, 2005, Appellant

[710 S.E.2d 72]

asserted that the probate court lacked jurisdiction over her and the subject matter of the proceedings.

By order dated August 25, 2008, Probate Court Judge Tiffany Provence denied Appellant's Petition. Judge Provence rejected Appellant's contention that the parties "re-used" the June 6, 2005 Order of Detention. Instead, she found that Dr. Hooker's Certificate of Licensed Physician Examination for Emergency Admission "trigger[ed] S.C.Code Ann. § 44–17–440, which grants state or local law enforcement three days from the date of said certification to transport the person to the hospital designated by the certificate." Referencing the applicable code provisions, Judge Provence found that "no procedural error existed under the S.C. Probate Code."

Appellant appealed Judge Provence's order to the circuit court. By order dated August 18, 2009, Judge Diane S. Goodstein affirmed Judge Provence's order in its entirety.

[392 S.C. 471] As outlined above, Appellant's challenge to the commitment proceedings was clearly beyond the statutorily-mandated, fifteen-day time period. *See* S.C.Code Ann. § 44–17–620 (2002) ("The petitioner or the person shall have the right to appeal from any order of the probate court issued pursuant to Section 44–17–580 to the court of common pleas of the county where the probate court is situated. The notice of intention to appeal together with the grounds for the appeal shall be filed in the probate court and the court of common pleas within fifteen days of the date of the order issued pursuant to Section 44–17–580."); *Mims v. Alston,* 312 S.C. 311, 440 S.E.2d 357 (1994) (holding that fifteen-day limit provided under section 44–17–620 sets forth the procedure to appeal any order of involuntary commitment from the probate court). Accordingly, we find Appellant was precluded from collaterally attacking the underlying commitment orders. *See In re Webber,* 201 N.C.App. 212, 689 S.E.2d 468 (2009) (recognizing that failure to timely appeal involuntary civil commitment order precluded collateral attack on alleged erroneous underlying order), *cert. denied,* 364 N.C. 241, 699 S.E.2d 925 (2010).

Furthermore, there is no evidence that Appellant appealed Judge Goodstein's order. Because Judge Goodstein's order constitutes a final adjudication regarding the validity of the commitment proceedings, the doctrine of *res judicata* precludes Appellant from asserting any challenge to the commitment orders.[8] *See Riedman Corp. v. Greenville Steel Structures, Inc.,* 308 S.C. 467, 419 S.E.2d 217 (1992) (recognizing that in order to bar subsequent lawsuit based on *res judicata,* the following elements must be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit).[9]

Additionally, we disagree with Appellant's assertion that her involuntary commitment was without a factual basis. [392 S.C. 472] In support of this assertion Appellant directs this Court's attention to numerous documents, including Dr. Leonhardt's consulting opinion

dated June 14, 2005, which was requested by Dr. Bryant–Mobley and reviewed by Dr. Dodds. It was indicated in the opinion that Appellant's condition was the result of "marital conflict" as she was an "alleged victim of abuse."

Initially, we would note that Judge Lawson presumably took into consideration Dr.

[710 S.E.2d 73]

Leonhardt's opinion as the court-appointed examiners presented their findings to Judge Lawson during the June 21, 2005 hearing. Furthermore, the remaining documents offered by Appellant are depositions and affidavits that post-date the involuntary commitment proceedings. These after-the-fact documents cannot operate to retroactively invalidate the commitment orders that were procedurally proper and factually substantiated by court-appointed medical personnel. To find otherwise, we would undermine the probate court's authority in involuntary commitment proceedings.

D.

Having found that the underlying commitment orders were valid, the question becomes whether Judge McMahon correctly granted summary judgment in favor of Respondent as to Appellant's claims of false imprisonment, defamation, and intentional infliction of emotional distress.

1. False Imprisonment

In granting summary judgment to Respondent, Judge McMahon found that Appellant's claim of false imprisonment could not be maintained because Respondent took Appellant [392 S.C. 473] into custody and detained her pursuant to a lawful order of the probate court.

"False imprisonment is the deprivation of one's liberty without justification." *Jones by Robinson v. Winn–Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct.App.1995). "In order to recover under a theory of false imprisonment, the complainant must establish (1) the defendant restrained him; (2) the restraint was intentional; and (3) the restraint was unlawful." *Id.*

"If a hospital fails to follow the statutory requirements for the commitment of a person to a hospital or mental facility, it may be liable for false imprisonment." 18 S.C. Jur. *Hospitals* § 21 (2011). "If these statutory guidelines are not followed, the hospital may face liability for false imprisonment because any detainment would be unlawful." *Id.*

As previously discussed, Appellant was lawfully taken into custody and detained pursuant to valid probate court orders. It is generally accepted that:

A person confined pursuant to an authorized mental health commitment proceeding or process may not recover damages in a false imprisonment action. In accordance with the general rule dealing with confinement under process, even where the order of commitment is erroneously made, but is valid on its face and issued by a court of competent jurisdiction, the detention is not false imprisonment.

State hospital officials have no duty to examine the form of the report of the examining psychiatrists upon which an order of commitment was based, nor is there any duty to examine or investigate a commitment order valid on its face, unless there is knowledge that there was, in fact, no basis for implementing the order.

32 Am.Jur.2d *False Imprisonment* § 33 (2007).

Accordingly, Appellant cannot maintain a claim of false imprisonment against Respondent. *See Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (Ct.App.1987) (concluding involuntary commitment of mother, who claimed she was not mentally ill, was pursuant to a lawful order of the probate judge and, thus, was not a basis for recovery on a claim of false imprisonment

against former husband, two adult children, and psychiatrist).

[392 S.C. 474] **2. Defamation**

In granting summary judgment to Respondent, Judge McMahon found the treatment provided by Three Rivers: (1) was confined to that ordered by the probate court; (2) was not disclosed to any party other than was ordered; and (3) any reports issued by Three Rivers were qualifiedly privileged and, thus, could not be defamatory. Additionally, Judge McMahon found that statutory exceptions allowed the disclosure of privileged psychiatric information in involuntary commitment proceedings.

"The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff."

[710 S.E.2d 74]

Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006) (citing *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998)).

"In order to prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Id.* "The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Fleming*, 350 S.C. at 494, 567 S.E.2d at 860.

We find that summary judgment was properly granted to Respondent as any communications issued by Three Rivers' employees were qualifiedly privileged as they were done in effectuating the lawful orders of the probate court. *See Manley*, 291 S.C. at 330–32, 353 S.E.2d at 315 (concluding mother, who was involuntarily committed, could not maintain action for defamation against former husband, two adult children, and psychiatrist where assertions made in connection with the involuntary commitment were qualifiedly privileged as they did not exceed their proper scope).

Furthermore, sections 44–22–90 and 44–22–100 of the South Carolina Code authorized Three Rivers' employees to disclose Appellant's mental health records within the confines of the [392 S.C. 475] involuntary commitment proceedings. *See* S.C.Code Ann. § 44–22–90(A)(2), (4) (2002) (providing exceptions to the disclosure of privileged mental health records, including in involuntary commitment proceedings and information related through the course of a court-ordered psychiatric examination); *id.* § 44–22–100(A)(2), (4), (5) (permitting disclosure of confidential mental health records where disclosure is necessary: for the conduct of proceedings before a court and that failure to make the disclosure is contrary to the public interest; to cooperate with law enforcement, health, welfare, and other agencies or to further the welfare of a patient; and to carry out the statutory provisions for involuntary commitment proceedings).

3. Intentional Infliction of Emotional Distress

In granting summary judgment in favor of Respondent, Judge McMahon found that the actions of Three Rivers could not be regarded as so extreme and outrageous to allow Appellant to recover for intentional infliction of emotional distress because Three Rivers did not participate in procuring the initial commitment order and the treatment of Appellant was conducted in a reasonable manner. Additionally, Judge McMahon held that Three Rivers was entitled to quasi-judicial immunity as it was treating Appellant pursuant to the involuntary commitment order.

In order to recover for intentional infliction of emotional distress, a plaintiff must establish the following:

(1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;

(2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"

(3) the actions of the defendant caused plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

[392 S.C. 476] We hold that Appellant could not, as a matter of law, maintain a claim for intentional infliction of emotional distress against Respondent as Respondent's conduct towards Appellant was reasonable and in accordance with the valid probate court orders. *See Manley,* 291 S.C. at 329–30, 353 S.E.2d at 314 (concluding mother, who was involuntarily committed to psychiatric facility, could not maintain cause of action for intentional infliction of emotional distress against former husband,

[710 S.E.2d 75]

two adult children, and psychiatrist, where defendants "acted in good faith and in a reasonable manner" regarding the involuntary commitment proceedings).

III. Conclusion

Because Appellant failed to timely and properly challenge the probate court's orders, they are presumed valid. Based on these valid orders, we find that Respondent's conduct toward Appellant was lawful, justified, and reasonable. Thus, Appellant cannot maintain causes of action for false imprisonment, defamation, or intentional infliction of emotional distress against Respondent. Accordingly, we affirm the decision of the circuit court granting summary judgment in favor of Respondent.

AFFIRMED.

Notes:

1. On December 15, 2006, Respondent's wholly-owned subsidiary, Premier Behavioral Solutions, Inc., entered into a stock sale purchase of Three Rivers Healthcare Group, L.L.C., Three Rivers SPE Holding, L.L.C., and Three Rivers SPE Manager, Inc., L.L.C.

2. S.C.Code Ann. § 44–17–410 (2002 & Supp.2010).

3. S.C.Code Ann. § 44–17–430 (Supp.2010).

4. Prior to this decision, a change of venue was made from Orangeburg County to Darlington County.

5. S.C.Code Ann. § 44–17–550 (2002).

6. S.C.Code Ann. § 44–17–580 (Supp.2010).

7. Prior to the summary judgment hearing, Appellant agreed to dismiss her causes of action for public disclosure of a private fact and invasion of privacy. Judge McMahon also denied summary judgment as to Respondent's claim that it was not a proper party and its reliance on the doctrine of *res judicata.*

8. Given the procedural history, Appellant's counsel conceded the validity of the initial commitment orders at oral argument before this Court.

9. In an attempt to circumvent these procedural bars, Appellant claims the alleged procedural errors divested the probate court of subject matter jurisdiction. We find this claim to be meritless as any alleged procedural error would not affect the subject matter jurisdiction of the probate court as all of the proceedings involved involuntary commitment issues for which the probate court is statutorily authorized to adjudicate. *See* S.C.Code Ann. § 62–1–

302(a)(6) (2009) ("To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to the involuntary commitment of persons suffering from mental illness...."); *Boan v. Jacobs,* 296 S.C. 419, 421, 373 S.E.2d 697, 698 (Ct.App.1988) ("The concept of jurisdiction refers to the authority of a court over a particular person (personal jurisdiction) or the authority of a court to entertain a particular action (subject matter jurisdiction), but the concept does not refer to the validity of the claim on which an action against a person is based.").

12-28-11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT

Martha Lewin Argoe,	)	
	)	Civil Action No.: 2007-CP-32-1981
Plaintiff,	)	
	)	
vs.	)	
	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,	)	**ORDER**
Defendants.	)	

This matter came before the Court for a hearing on December 7, 2011 on Plaintiff's Motion to File a Second Amended Complaint. Robert D. Dodson appeared on behalf of the Plaintiff, Martha Lewin Argoe. Jim Parham appeared on behalf of the Defendant, Cheryl C. Dodds, M.D. Sterling G. Davies appeared on behalf of Defendant, Psychiatric Solutions, Inc. Andrew N. Cole appeared on behalf of Defendants, Doris Ann Burrell and Three Rivers Behavioral Health, LLC. Larry Kerr appeared on behalf of Defendants, Phyllis Bryant-Mobley, M.D. and Glenn Hooker, M.D. Noah M. Hicks, II appeared on behalf of Defendant, Carolina Care Plan. Elloree Ganes appeared on behalf Defendant, David Steiner, M.D. Shelton W. Haile appeared on behalf of Defendant, Aiken Regional Medical Center.

BACKGROUND

This case has a complicated and lengthy procedural history. In her Amended Complaint, Plaintiff alleges that her former husband and son conspired to take her money and assets by having her involuntarily committed for inpatient psychiatric care. Plaintiff alleges that she was

not mentally ill or in need of inpatient psychiatric care but she was nevertheless detained for several weeks against her will. Plaintiff alleged various causes of action against Defendants for their roles in her involuntary commitment.

In various decisions and orders, this Court previously dismissed some, but not all, of Plaintiff's claims against some, but not all Defendants. In addition, the Plaintiff settled her case against her former husband and her son and therefore these parties were dismissed from this action.

The Plaintiff, through her previous attorneys, appealed portions of this Court's order dismissing the various causes of action to the South Carolina Court of Appeals and South Carolina Supreme Court. During the pendency of this appeal, discovery was stayed for those causes of action and claims which were not dismissed by this Court. Earlier this year, the South Carolina Supreme Court issued a decision and Order affirming this Court's previous orders granting summary judgment to certain Defendants on certain causes of action.

After the Supreme Court remanded the case for proceedings consistent with its opinions, this Court held a status conference with the parties on September 23, 2011. Based on the status conference this Court issued an "Order Concerning Status" which directed Plaintiff's counsel to draft a proposed Second Amended Complaint in order to clarify the issues to be litigated. Pursuant to the Order Concerning Status, Plaintiff's counsel circulated the proposed Second Amended Complaint to all counsel of record. Defendants objected to the proposed Second Amended Complaint and Plaintiff timely filed the motion that is now pending before this Court.

DISCUSSION

The standard for amended pleadings is found in Rule 15 of the South Carolina Rules of Civil Procedure. According to Rule 15(a), the right to amend "shall be freely given when justice

so requires and does not prejudice any other party." Rule 15(c) provides, "whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth, the amendment relates back to the original pleading." "A motion to amend is addressed to the sound discretion of the trial judge and the party opposing the motion has the burden of establishing prejudice." Kelly v. S.C. Farm Bureau Mutual Ins. Co., 316 S.C. 319, 323, 450 SE 2d 59, 61 (Ct. App. 1994).

In opposition to Plaintiff's motion, Dr. Hooker's attorney, Larry Kerr, argued that Dr. Hooker would be prejudiced if the Motion to Amend were granted because this Court previously granted Dr. Hooker's motion for summary judgment and he was dismissed from the case by an Order dated June 27, 2008. Because no causes of action currently exist against Dr. Hooker, Plaintiff's Motion to Amend as to Dr. Hooker and Dr. Hooker only is DENIED.

The remaining Defendants argued they would be prejudiced because Plaintiff's causes of action for medical assault and medical battery are prohibited under South Carolina law. They specifically argue that under Linog v. Yampolsky, 376 S.C. 182, 656 S.E.2d 355 (2008), claims for medical battery are not recognized as independent causes of action in South Carolina and must be pursued under the framework of medical negligence. Plaintiff's counsel argues that he is not attempting to plead these causes of action outside the framework of medical negligence because Plaintiff has already disclosed an expert witness who has previously submitted an affidavit to this Court supporting Plaintiff's claims. Plaintiff's counsel argued that these causes of action could be re-pleaded under the medical negligence cause of action set forth in the proposed Second Amended Complaint. Plaintiff's counsel also represented to the court that instead of listing these causes of action separately in the Second Amended Complaint, he would move them under the heading and cause of action for medical negligence. Because the Court's

opinion in Linog v. Yampolsky contemplates that medical battery should be a part of the more general cause of action for medical negligence, I find no prejudice to the Defendants if these elements are alleged under that cause of action. Therefore, Plaintiff's Motion to File a Second Amended Complaint is GRANTED and these claims relate back to the original pleadings provided that Plaintiff's claims for medical battery and assault are pleaded as part of her cause of action for medical negligence.

Psychiatric Solutions, Inc., through its attorney, argued it would be prejudiced by a Second Amended Complaint because the original Complaint and the First Amended Complaint did not set forth causes of action for medical negligence against Psychiatric Solutions, Inc. Instead, the only remaining cause of action against it is for civil conspiracy. Psychiatric Solutions, Inc. maintains that it has prepared a strategy to defend this action based on what was originally pleaded in the Complaint and First Amended Complaint. However, as noted previously, discovery in this case was stayed pending resolution of the issues on appeal. According to all counsel, only limited written discovery has been taken and no depositions have been taken. Accordingly, because Psychiatric Solutions will have a full and fair opportunity to defend this case on the merits, the Court finds no prejudice to it by allowing the Plaintiff to file the Second Amended Complaint as outlined above.

Defendants raised a variety of other issues which pertain to the merits of the case. In essence, many Defendants argued that the underlying case against it has no merit and therefore the pending Motion to Amend should be denied. In granting Plaintiff's Motion to Amend and finding that the amendments relate back to the original pleadings as outlined above, the Court takes no position, at this time, on the merits of Plaintiff's case, the merits of any defenses which may be asserted by Defendants or the effect of the South Carolina Supreme Court opinions of

Argoe v. Three Rivers Behavioral Center, 388 S.C. 394, 697 S.E. 2d 551 (2010), reh'g den. (Sept. 2, 2010) (Argoe I) and Argoe v. Three Rivers Behavioral Health, LLC, 392 S.C. 462, 710 S.E.2d 67 (2011) (Argoe II). Each Defendant may file an Answer, responsive pleading or motion in accordance with the Rules of Civil Procedure and the Court will address any such motions and the merits of Plaintiff's case and merits of any defenses asserted by the Defendants at another date and time.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Amend as to Dr. Hooker is DENIED. Plaintiff's Motion to Amend as to the remaining Defendants is GRANTED and the amendments relate back to the original pleadings provided Plaintiff's claims for medical assault and medical battery are pleading under and as part of Plaintiff's claim for medical negligence.

IT IS SO ORDERED.

The Honorable Michael G. Nettles

Dec 28, 2011

Florence, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP1802401

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CLERK OF COURT
DORCHESTER COUNTY

Probate Court Dorchester County *vs.* Martha L Argoe

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore 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; ☐ Statement of Judgment by the Court:

Dated at St. George, South Carolina, this 5th day of January, 2009.

Court Reporter:

Cheryl Graham

- Cheryl Graham, Clerk of Court, By: Carolyn Ayer, Deputy

This judgment was entered on the 5th day of January, 2009, and a copy mailed first class this 5th day of January, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Michael Barfield to provide counsel with filed stamped copies per letter

Probate Court Dorchester County ,

Jan L. Warner Warner Payne & Black, LLP P.O. Box 2628 Columbia, SC 29202
Mason A. Summers Richrdsn Plowden Carpenter&Robinson,PA P.O. Drawer 7788 Columbia, SC 29202
Michael Barfield M Dawes Cooke Jr. Barnwell

CPFORM4M

CERTIFIED COPY
2010 JAN -5 PM 12: 06
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

In The Court of Common Pleas

First Judicial Circuit for Dorchester County

C/A No.: 2008-CP-18-2401

CERTIFIED COPY
2010 JAN -5 PM 12: 11
CLERK OF COURT
DORCHESTER COUNTY

APPEAL FROM THE PROBATE COURT FOR DORCHESTER COUNTY
TIFFANY PROVENCE, PROBATE JUDGE

In the Matter of Martha L. Argoe
Case No.: 2006-GC-18-00053

ORDER

THIS MATTER came before this Court pursuant to a Notice of Appeal filed by Petitioner, Martha L. Argoe, on September 17, 2008, from an Order disused by Judge Tiffany Provence of the Dorchester County Probate Court filed August 25, 2008.

The parties to this action, in addition to the Petitioner, are Intervenors James Walsh, Esquire; Dr. David A. Steiner; Aiken Regional Medical Center; Three Rivers Behavioral Center; Doris Ann Burrell, RN; Dr. Glenn Hooker, Dr. Cheryl C. Dodds, and Dr. Phyllis Bryant-Mobley, M.D. The parties to this appeal consented to foregoing oral arguments and asked the Court to base its decision exclusively on the parties' written submissions. Having reviewed those submissions, it is the decision of this Court to uphold all of the findings within Judge Provence's Order of August 25, 2008.

FACTUAL AND PROCEDURAL BACKGROUND

The Dorchester County Probate Court was only asked to make conclusions of law. The parties do not dispute any of the facts underpinning that Court's decisions. As such, this Court adopts the recitation of the facts contained within the Probate Court's Order of August 25, 2008, as follows:

> (1) On June 6, 2005, an Application for Involuntary Emergency Hospitalization for Mental Illness was properly filed within the Orangeburg County Probate Court. Applicant, G. Lewis Argoe, Jr., alleged facts substantial for issuance of an Order of Detention under S.C. Code Ann. § 44-17-430.
>
> (2) On June 6, 2005, an Order of Detention was issued and signed by Judge Pandora Jones-Glover. The only evidence presented for this Court to consider as to the exact time of the issuance of the Order of Detention was a handwritten note on the upper right corner of the document showing a time of 3:10 p.m.
>
> (3) The Order of Detention form provides language from the Code of Law that states '... provided the individual taken into custody shall have the right to representation by an attorney. If within the twenty-four (24) hours the person in custody is not examined by a licensed physician, or if upon examination, the physician does not execute the certification provided for in Section 44-17-410(2), ... the individual in custody shall be immediately released.'
>
> (4) On June 7, 2005, based on the valid Order of Detention, Petitioner was transported to the emergency room of The Regional Medical Center of Orangeburg. Medical records presented as evidence (Exhibit 8) for the first time at this hearing show that Petitioner was presented at approximately 3:35 p.m. for Mental Evaluation. Records further reflect and that she was not there on a voluntary basis.
>
> (5) Furthermore, those same records from The Regional Medical Center contain doctor's notes which state, in relevant part, the following:
>
> a. 'Onset of symptoms reported as gradual, onset was approx. 1.5 years ago. Patient (Petitioner)

currently has symptoms. Complaint is intermittent.'

b. 'She (Petitioner) was seen by Dr. Hooker today at Mental Health and he has sent her over for medical clearance with the understanding from him that if she can be cleared medically she is to be discharged and f/u (follow up) with him in the office tomorrow.'

c. 'Will d/c (discharge) to home to f/u (follow-up) with MHC.'

d. 'Patient's status is stabilized.'

e. 'Make sure you (Petitioner) follow up with your doctor tomorrow for a recheck.'

(6) On June 7, 2005, Petitioner was discharged from The Regional Medical Center at approximately 5:12 p.m. and was returned home by the Orangeburg County Sheriff's Department.

(7) On June 8, 2005, Dr. Hooker, acting through Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to S.C. Code § 44-17-410(2). Two copies of this document were presented to the court by the Petitioner for consideration. The first (Exhibit 4) shows no date or time, the second document (Exhibit 7) showing a time of '3:00 p.m.' and a date of '6/8/08.' Both documents list Aurora Pavilion (a/k/a Aiken Regional) as the facility accepting Petitioner for further treatment.

(8) Despite the discrepancies on Part II of the Certificate of Licensed Physician as described immediately above, it is undisputed that on June 8, 2005 Petitioner was transported by law enforcement to Aurora Pavilion for involuntary treatment. All records indicate that this treatment was not voluntary and was based on the Part II document. Petitioner's medical records from that facility verify she was admitted on 6/08/05 at 17:45 (5:45 p.m.).

(9) On June 9, 2005, Petitioner was admitted to Thee Rivers Treatment Facility. On that same date, Three Rivers completed the Notification of Emergency Admission and Appointment of Designated Examiners as required by S.C. Code Ann. § 44-17-410(3).

(10) On June 13, 2005, Orangeburg County Probate Court closed

in the Notification of Emergency Admission and Appointment of Designated Examiners. On that same date, Darlington County accepted the same under a change of venue from Orangeburg County. This change of venue is a standard practice allowed by Court Administration to improve judicial efficiency and reduce the costs associated with judges statewide traveling to hospitals across the state for a single hearing.

(11) On June 13, 2005 Darlington County appointed the two designated examiners as required by S.C. Code Ann. § 44-17-410 and issued an Order for Continued Hospitalization and for Hearing to be held on June 21, 2005. These actions are all in compliance with the S.C. Code.

(12) On June 14, 2005, Darlington County appointed Alvin Neal, Esquire, as the Court Appointed Attorney / GAL for Petitioner. Notice was given of the scheduled time and place for Petitioner's hearing pursuant to S.C. Code Ann. § 44-17-550.

(13) Two designated examiners, Dr. Phyllis Mobley and D. Ann Burrell, R.N., filed their reports within the time allotted by law. Both designated examiners found Petitioner needed continued involuntary inpatient care.

(14) On June 21, 2005, Petitioner attended and participated in a hearing with Judge Marvin Lawson of Darlington County and her court appointed counsel, Alvin Neal, Esquire. An Order for Continued Treatment was issued pursuant to S.C. Code Ann § 44-17-580 with mandatory outpatient treatment to follow at Orangeburg County Mental Health Facility for a period not to exceed twelve (12) months.

(15) Petitioner's ability to appeal this Order to the Court of Common Pleas expired fifteen (15) days from the time of the June 21, 2005 Order pursuant to S.C. Code Ann. § 44-17-620.

(16) Over a year later, on August 14, 2006, counsel for Petitioner submitted a Notice of Motion and Motion to Vacate All Proceedings Ab Initio, To Disqualify Pandora Jones-Glover, Probate Judge, From Presiding Over Any Proceedings With Regards To These Proceedings, And For Related Relief.

(17) On September 6, 2006 the S.C. Supreme Court appointed this court to hear any and all matters related to *In Re: Martha L. Argoe*

(18) Between September 29, 2006 and January 18, 2007, interested parties filed various pleadings, motions, and actions in this

and other courts. Petitioner and applicant/husband filed for a divorce, and Petitioner's counsel has filed a civil action with regards to this commitment.

(19) On January 8, 2007, this Court scheduled and heard a hearing on the Motion to Compel filed by James F. Walsh, Jr. as attorney for George Lewis Argoe, Jr. and George Lewis Argoe, III. Walsh sought production of all materials related to the involuntary commitment of Petitioner pursuant to Rule 37 of the South Carolina Rules of Civil Procedure.

(20) During this hearing, and by agreement of the parties, the court undertook an *in camera* review of the sealed involuntary commitment file from Orangeburg and Darlington Counties to determine if the documents were necessary 'for the conduct of the proceedings before it' under S.C. Code Ann. § 44-22-100. By agreement of the parties, the court further sought to determine whether or not there were any violations of Petitioner's rights under S.C. Code Ann. § 44-17-410(3), § 44-17-420, § 44-17-430, or § 44-17-570, as cited in the Motion to Vacate.

(21) The involuntary commitment filed reviewed did not contain evidence of Petitioner's first detainment and transport to The Regional Medical Center as described in (4), (5), and (6) above, nor did the file contain any information regarding Petitioner's admission to Aiken Regional (Aurora Pavilion) as described in (8) above, other than the listing of that hospital on Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to S.C. Code Ann. § 44-17-410(2) as described in (7) above.

(22) As a result of the *in camera* review, an Order dated January 18, 2007 was issued, wherein the court denied the Motion to Compel and further determined that the documents established no evidence of Petitioner's rights being violated during the involuntary commitment procedure.

(23) On March 25, 2008, almost two years after the original Order of Commitment, Petitioner, by and through her attorneys, Jan L. Warner, Esquire, and Matthew E. Steinmetz, Esquire, filed a Petition to Vacate Commitment Based Upon Lack of Subject Matter Jurisdiction. The said Petition alleges, in part, that Petitioner was transported under an invalid Order of Detention, thereby invalidating the Probate Court's subject matter jurisdiction over the case.

(24) Following the filing of the Petition to Vacate, Motions to

> Intervene were filed by interested partied [sic] including Molly Craig, Esq.; Elloree Gaines, Esq.; Elizabeth W. Ballentine, Esq. of Hood Law Firm on behalf of Dr. Steiner; George Beighley, Esq. of Richardson Plowden on behalf of Aiken Regional Medical Center; Michael Barfield, Esq. of Barnwell Whaley on behalf of James F. Walsh, Jr.; William Davidson, Esq. of Davidson, Morrison & Lindemann on behalf of Dr. Glenn Hooker and Dr. Phyllis Bryant-Mobley; James E. Parham, Esq. on behalf of Dr. Cheryl C. Dodds; and Andrew N. Cole, Esq. of Collins & Lacy, P.C. on behalf of Three Rivers Behavioral Center; Doris Ann Burrell, RN.

ISSUES ON APPEAL

1. DID THE PROBATE COURT COMMIT REVERSIBLE ERROR IN GRANTING LEAVE FOR THE INTERVENORS TO APPEAR AND ARGUE AGAINST THE PETITIONER'S MOTION TO VACATE HER INVOLUNTARY COMMITMENT?

2. DID THE PROBATE COURT ERR IN FINDING THAT IT RETAINED SUBJECT MATTER JURISDICTION OVER THE PETITIONER'S INVOLUNTARY COMMITMENT PROCEEDINGS EVEN IF *ARGUENDO* THERE WERE PROCEDURAL ANOMALIES IN THE ISSUANCE AND/OR EXECUTION OF THE ORDER INVOLUNTARILY COMMITTING PETITIONER?

3. DID THE COURT COMMIT REVERSIBLE ERROR BY FINDING THAT THERE WERE NO SUBSTANTIVE OR PROCEDURAL ERRORS COMMITTED WITHIN THE CONTEXT OF THE PROCEDURES SURROUNDING PETITIONER'S INVOLUNTARY COMMITMENT?

CONCLUSIONS OF LAW

1. DID THE PROBATE COURT COMMIT REVERSIBLE ERROR IN GRANTING LEAVE FOR THE INTERVENORS TO APPEAR AND ARGUE AGAINST THE PETITIONER'S MOTION TO VACATE HER INVOLUNTARY COMMITMENT?

Intervenors were all named as Defendants in a case styled Martha Lewin Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions, Its Successor; Phyllis Bryant-Mobley, MD; Glenn Hooker, MD; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, MD;

Cheryl C. Dodds, MD; Doris Ann Burrell, RN; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III, Lexington County Court of Common Pleas Civil Action Number 2007-CP-32-1981. Intervenors Dodds and Walsh were granted summary judgment as to all of Petitioner's allegations in that case. The remaining Intervenors were awarded summary judgment with respect to all claims except Petitioner's allegation of medical malpractice in that matter. Petitioner appealed as to Walsh and Dodds. The South Carolina Court of Appeals has subsequently dismissed the Dodds appeal while the Walsh appeal is still pending. The claims against the remaining Intervenors in the Lexington County action have been stayed pending the outcome of that appeal. The Order granting summary judgment in favor of Intervenor Walsh quoted and relied upon in part the Dorchester County Probate Court's Order denying Petitioner's original motion to vacate her involuntary commitment. That Order, dated January 18, 2007, and signed by Judge Tiffany Provence was one of the subjects of Petitioner's second motion to vacate, the denial of which is the substance of the present appeal.

The standard of review for this Court with regard to the Probate Court's decision to grant Intervenors' Motions to Intervene to determine whether there was an abuse of discretion below. South Carolina Tax Commission v. Union County Treasurer, 295 S.C. 257, 368, S.E. 2nd 72 (Ct. App. 1988).

The Petitioner appealed the Probate Court's Order allowing Intervenors to intervene on their own behalf. However, the Court's finding was appropriate under the circumstances of the matter before it. First, because Lewis Argoe, Jr. and Lewis Argoe, III entered into an agreement with Petitioner that would preclude them from contesting the Petitioner's motion to vacate her

commitment, without intervening parties there would be no one in the probate action to argue against Petitioner's motion to vacate, leaving the Court to decide the question without the benefit of valid opposing interpretations of the law. More importantly, if Petitioner had been successful in her motion to vacate, it could potentially have an adverse impact on the Intervenors in the Lexington County Common Pleas action. At a bare minimum, it would create the potential for inconsistent findings of fact and conclusions of law between the Probate Court and the Court of Common Pleas.

A. Governing Legal Standards

The South Carolina Rules of Civil Procedure recognize two potentially applicable types of intervention:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
>
> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

See S.C.R. Civ. P. 24(a) & (b). "Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected." See In re Horry County State Bank, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004).

The prerequisites to intervention as a matter of right are well-settled in South Carolina:

> [A] party seeking intervention under Rule 24(a)(2) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other

> parties. Ex Parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993). . . .
>
> The burden of demonstrating inadequacy of representation is on the applicant. [Citation omitted.] This burden may be satisfied by a showing that the representation of the applicant's interest "may be" inadequate. [citation omitted].
>
> . . . [O]ur supreme court adopted the following Sagebrush factors for determining the adequacy of representation:
>
> > (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

Horry County State Bank, 361 S.C. at 508-09, 604 S.E.2d at 725-26 (quoting Berkeley Electric Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990)). "Intervention of right requires a direct, substantial, legally protectable interest in the proceedings." See Ex Parte Reichlyn, 310 S.C. at 499, 427 S.E.2d at 664. However, the Court is granted significant freedom in deciding whether intervention is appropriate in light of the unique circumstances of the case before it:

> In analyzing the facts of this particular case, we recognize that intervention controversies arise in a myriad of contexts. We interpret the rules to permit liberal intervention particularly where as here, judicial economy will be promoted by the declaration of the rights of all parties who may be affected. Accordingly, we must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2). Each case will be examined in the context of its unique facts and circumstances. In reviewing the granting or denial of a Rule 24(a)(2) motion, we must determine whether the trial judge abused his discretion. S.C. Tax Commission v. Union County Treasurer, 295 S.C. 257, 368 S.E.2d 72 (Ct. App. 1988).

See Berkeley Electric Co-op., Inc., 302 S.C. at 189, 394 S.E.2d at 714.

In addition to intervention as a matter of right, the Court may also permit intervention in certain additional circumstances:

> To warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general

> interest in the subject matter of the litigation is not sufficient. 3B J. Moore, Moore's Federal Practice Section 24.10[2] (2d ed. 1987).
>
> Under Federal Rule of Civil Procedure 24(b), which is identical to the South Carolina Rule in all relevant respects, permissive intervention is wholly discretionary with the trial court and a court will be reversed on appeal only for abuse of discretion. [Citations omitted.] . . . Like permissive joinder, Rule 24(b) intervention is premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions.

See South Carolina Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988).

B. Intervention as of Right

For the reasons stated below, Intervenors were properly allowed to Intervene in this matter "as of right" pursuant to Rule 24(a)(2). All of the elements of mandatory intervention are satisfied in this case:

i. Timeliness of Application

There was no allegation that Intervenors' application for intervention was untimely. Thus, the first factor is not at issue.

ii. Interest in Subject Matter of the Action

Certainly Intervenors have an interest in upholding the findings of the Probate Court in that that Court made findings of fact and conclusions of law that were cited by the Circuit Court in at least one of its Orders granting summary judgment in the Lexington County action. In that malpractice case, Martha Argoe alleged that Intervenor Walsh conspired with others, including the Orangeburg County Probate Judge, to have her committed in order to facilitate the transfer of valuable property out of her name. While Walsh was not counsel of record in the commitment proceedings at that time, these allegations thrust him squarely into the middle of them at present. What's more, Walsh was counsel of record for purposes of the subsequent actions to have guardians and conservators appointed for Mrs. Argoe at various times during her period of commitment. One

of the Orders that Mrs. Argoe now seeks to vacate addresses not only her commitment but also the propriety of those related actions in the Probate Court, all of which are at issue in the Lexington County case. To the extent that the Probate Court reviewed the Petitioner's commitment proceedings and found them to have been appropriate, all of the Intervenors would be adversely affected to one degree or another if those findings were overturned.

iii. Denial of Intervention May Impede Ability to Protect Interest

iv. Interest Not Represented by Other Parties

The third and fourth factors are largely identical for purposes of this matter. As described above, the inability of Lewis Argoe Jr. and Lewis Argoe, III to further litigate against Martha Argoe in any forum would leave Mrs. Argoe as the sole party to this action in the absence of Intervenors. It is important to note that the Probate Court's rationale in permitting the intervention of Intervenors was to ensure that it was presented with any viable counterarguments to the contentions of Petitioner.

It would be inequitable and inefficient to prevent Intervenors from defending their actions vis a vis Mrs. Argoe's commitment in this forum. Intervenors have already been successful in that endeavor in the malpractice case. To the extent that Petitioner may attempt to use any relief that she may obtain here to then mount a second attack on Intervenors in the malpractice action, it is only fair that Intervenors should have their say in this forum.[1]

C. Intervenors Should Be Allowed to Permissively Intervene

In addition to the foregoing, Intervenors were properly allowed to intervene permissively in this case. There are numerous common questions of law and fact between the Malpractice Action and the probate action. Therefore, it only serves judicial economy for those issues to be litigated by all interested parties wherever they may be raised. There was certainly no risk of delay or undue

[1] Petitioner has never refuted Intervenors' contention that the purpose of this challenge to her commitment was to mount a new attack on Intervenors in the malpractice action.

prejudice to Petitioner as a result of Intervenors' appearance in the case. The only issue before the Probate Court was set forth in a single Petition. Intervenors appeared at the hearing of that Petition to oppose it and Intervenor Walsh submitted a proposed Order to the Probate Court at its request. As such, the matter moved as swiftly as it otherwise would have absent Intervenors. Furthermore, as discussed above, the Probate Court welcomed the arguments of Intervenors to assist it in the analysis of Petitioner's claims.

D. Conclusion

As stated above, an Order granting intervention as a matter of right under Rule 24(a)(2), as with permissive intervention under Rule 24(b)(2), is subject to an abuse of discretion standard. *See*, Berkeley Electric Coop., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2nd 712 (1990). Our Supreme Court interprets Rule 24(a)(2) to permit liberal intervention where judicial economy will be promoted by the declaration of the rights of all parties who may be affected. *See*, *Id.* In making their determinations, courts "must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of [the rule]." *See*, *Id.*

The intervention of all the Intervenors in the Probate action was appropriate under both Rule 24(a)(2) and 24(b)(2). At this point, the probate action and the malpractice action are so intertwined as to almost require that the defendants from the malpractice action have their say in the probate matter. Considering the factual and procedural history of this matter, it is clear that the Probate Court did not abuse its discretion by granting Intervenors' motions to intervene, whether that intervention was as a matter of right under Rule 24(a)(2) or merely permissive under Rule 24(b)(2). Furthermore,

Petitioner put forth no arguments as to how Judge Provence abused her discretion by allowing Mr. Walsh to intervene on his own behalf. Therefore her Order allowing intervention should be allowed to stand.

2. DID THE PROBATE COURT ERR IN FINDING THAT IT RETAINED SUBJECT MATTER JURISDICTION OVER THE PETITIONER'S INVOLUNTARY COMMITMENT PROCEEDINGS EVEN IF *ARGUENDO* THERE WERE PROCEDURAL ANOMALIES IN THE ISSUANCE AND/OR EXECUTION OF THE ORDER INVOLUNTARILY COMMITTING PETITIONER?

This Court is in full agreement with the Probate Court's Orders finding that even a procedural deviation from the requirements of the involuntary commitment statute would not have the effect of divesting the Probate Court of subject matter jurisdiction.

Under S.C. Code Ann. §62-1-302 (6), the Probate Courts have exclusive original subject matter jurisdiction over the involuntary commitment of persons suffering from mental illness, mental retardation, alcoholism, drug addiction, and active pulmonary tuberculosis. Thus, the Probate Court's jurisdiction over the underlying matter is a creature of statute and has nothing to do with anything that a particular probate court may do or not do in an individual case. Furthermore, this Court agrees with the Probate Court that a challenge of the Probate Court's subject matter jurisdiction over Petitioner's involuntary commitment could only be raised at this juncture pursuant to S.C.R.C.P. Rule 60(b)(4). Rule 60(b)(4) permits relief from a final judgment or order if the movant, within a reasonable time after the filing of the judgment, appears with proof that the judgment is void. If the court issuing the judgment lacked jurisdiction, the judgment is certainly void. Thus, a challenge to the Probate Court's commitment order based on a lack of subject matter jurisdiction is the only possible avenue of relief for the Petitioner more than a year after the filing of

the judgment because it was left unappealable.

By finding that subject matter jurisdiction was properly laid with the Probate Court, it is unnecessary to engage in any further analysis of the Petitioner's arguments because they are time barred. However, in the interest of thoroughness, Petitioner's substantive arguments are addressed below.

3. DID THE COURT COMMIT REVERSIBLE ERROR BY FINDING THAT THERE WERE NO SUBSTANTIVE OR PROCEDURAL ERRORS COMMITTED WITHIN THE CONTEXT OF THE PROCEDURES SURROUNDING PETITIONER'S INVOLUNTARY COMMITMENT?

This Court agrees with Probate Court's analysis of the S.C. Probate Code within the context of Petitioner's involuntary commitment proceedings. Specifically, the Probate Court found:

* * *

> Petitioner's argument focuses exclusively on S.C. Code Ann. § 44-17-430. Petitioner contends that all proceedings which occurred after Petitioner's June 7, 2005 discharge from The Regional Medical Center are 'fatally defective and void' because the Probate Court lacked personal jurisdiction over Petitioner and subject matter jurisdiction over the issues. I disagree. Petitioner's argument fails for the following reasons:
>
> Petitioner makes the assumption that she was transported on June 8, 2005 using the same Order of Detention issued by the Orangeburg County Probate Court on June 6, 2005; however, this fact is not substantiated by the evidence. In fact, a close look at the documentation shows that when transported on June 7, 2005 to The Regional Medical Center, Petitioner admitted to symptoms, communicated with the staff that she was to follow up with Dr. Hooker at the Orangeburg Area Mental Health Clinic the following day, and stated that Dr. Hooker 'sent her over for medical clearance.' Whether or not Petitioner followed up as directed by The Regional Medical Center is unknown.
>
> However, the following day, on June 8, 2005 it was Dr. Hooker who completed Part II of the Certificate of Licensed Physician

> Examination for Emergency Admission pursuant to S.C. Code § 44-17-410(2). This certification is significant, as it triggers S.C. Code § 44-17-440, which grants state or local law enforcement three days from the date of said certification to transport the person to the hospital designated by the certificate, which in this case was Aurora Pavilion (a/k/a Aiken Regional). There is substantial evidence to demonstrate that when Petitioner was transported involuntarily on June 8, 2005, such transport took place under S.C. Code § 44-17-440, as opposed to resulting from a re-use of the Order of Detention which may or may not have been valid.
>
> Petitioner argues to the Court that at least one copy of the Certificate of Licensed Physician Examination for Emergency Admission lacked a date and time of completion to verify this information; however, a second copy was offered (Exhibit 7) which corrected the error. In addition, the second copy was consistent with the filings of the Darlington County Probate Court, which entered the Order of Commitment. Furthermore, no evidence was entered to contradict that Dr. Hooker's certificate was filed timely and prior to Petitioner's transportation to Aurora Pavilion. While it is regrettable that incomplete forms or illegible handwriting can lead to confusion, costly litigation, and incomplete information, this in and of itself is not significant enough to vacate this proceeding or overrule the multiple findings of probable cause or doctor's testimonies that lead to Petitioner's court ordered treatment. For the reasons above, I continue to find that no procedural error existed under the S.C. Probate Code.

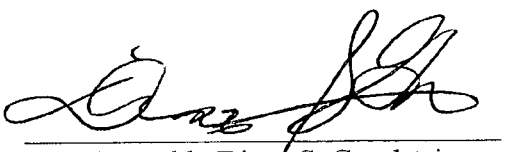
* * *

Furthermore, I find that S.C. Code Ann. § 44-17-430, the statutory provision upon which Petitioner bases her argument should not be read as rigidly as Petitioner argues. § 14-17-430 states that a detention order is valid for 72 hours from the time it is issued. The Petitioner was picked up within 24 hours, which is well within the time prescribed. She was evaluated by a licensed physician who issued a Certificate within 24 hours of her being picked up for the first time on June 7, 2005. The fact Petitioner was allowed to sleep in her own bed between her physical evaluation at Orangeburg Regional and her mental evaluation at Aurora Pavilion the following day is of no

consequence. It would arguably be cruel to require a patient who is picked up late in the day to undergo a full medical evaluation and then be taken directly to a facility for a mental evaluation, which could potentially stretch late into the night. In this instance, the Orangeburg County Sheriff's Department acted both humanely and within the bounds of the Probate Code. It is immaterial that the Petitioner was not detained for the entire time that the Sheriff's Department was carrying out the mandates of the Probate Court's detention Order—only that the Order was carried out within 72 hours and that within 24 hours of her being taken into custody by the Sheriff's Department, she was evaluated by a psychiatrist who issued a Certificate of Involuntary Commitment. Thus, even if Judge Provence's application of the Probate Code to the Petitioner's involuntary commitment is incorrect, this Court finds that if one were to rely exclusively on § 44-17-430 as Petitioner does, the outcome would be the same.

CONCLUSION

For all of the foregoing reasons, the findings of the Probate Court are AFFIRMED.



The Honorable Diane S. Goodstein

Date: August 18, 2009

Summerville, South Carolina

ORIGINAL 7.3.08 JLM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Martha Lewin Argoe,	)	Civil Action No. 07-CP-32-1981
Plaintiff,	)	
v.	)	ORDER
Three Rivers Behavioral Center, LLC and Psychiatric Solutions, Inc., It's Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker, M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.,	)	
Defendants.	)	

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Beth A. Carrigg
Clerk of Court
Lexington, SC

The Defendants, Glenn Hooker, M.D., (Dr. Hooker) and Phyllis Bryant-Mobley, M.D., (Dr. Mobley) move for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP).

Under Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP), summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Laurens Emergency Med. Specialists v. M.S. Bailey, & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003); Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v.

Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003); Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); see also Laurens Emergency Med. Specialists, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. Baril v. Aiken Reg'l Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRCP. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases which do

not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001).

A hearing was held on May 29, 2008. In support of and in opposition to the Motion for Summary Judgment, counsel for the Plaintiff (Ms. Argoe) and counsel for Drs. Hooker and Mobley submitted memorandums, statutes, case law, documents and Orders filed in various Probate Court and Family Court proceedings, medical records and Affidavits. In further opposition to the Motion before the Court, Ms. Argoe submitted several depositions taken in the Beaufort County case, which was consolidated with this Lexington County case (Drs. Hooker and Mobley objected to the use of the depositions pursuant to Rule 32 of the South Carolina Rules of Civil Procedure), the Affidavit of her psychiatry expert, Dr. Dave M. Davis of Atlanta, Georgia, and a copy of her Petition to Vacate Commitment Based Upon Lack of Subject Matter Jurisdiction dated March 25, 2008, and filed in the Dorchester County Probate Court.

On June 6, 2007, Ms. Argoe filed a Complaint in the Lexington County Court of Common Pleas and thereafter filed an Amended Complaint dated June 13, 2007, in which she alleges fifteen causes of action against the Defendants. Twelve of these causes of action are directed to Defendant, Phyllis Bryant-Mobley, M.D., while eight of these causes of action are directed to Defendant, Glenn Hooker, M.D.

Dr. Hooker is a licensed psychiatrist practicing in the Florence and Orangeburg areas of South Carolina and at the time of the matters alleged in the Complaint, provided psychiatric evaluation of patients at the Orangeburg Area Mental Health Clinic. (Hooker Affidavit). Dr. Mobley is a licensed psychiatrist who at the time of the matters alleged in the Complaint, had privileges to provide psychiatric care to patients in the Three Rivers Center for Behavioral Health, another Defendant in this case (Three Rivers). (Mobley Affidavit).

On June 8, 2005, pursuant to an Order of Detention dated June 6, 2005 by The Honorable Pandora Jones-Glover, Judge of Probate, Orangeburg County and an Application for Involuntary Emergency Hospitalization for Mental Illness, Defendant Dr. Hooker assessed Martha L. Argoe at the Orangeburg Area Mental Health Clinic. Dr. Hooker initially referred her to the Orangeburg Regional Medical Center for a complete medical workup which was performed in the Emergency Department at Orangeburg Regional Medical Center. The findings of Ms. Argoe's medical workup were provided to Defendant Hooker and were found to be within normal limits. (Hooker Affidavit).

Dr. Hooker subsequently performed a psychiatric assessment of Ms. Argoe. He identified various mental health issues and noted his findings on the Examination for Emergency Admission form dated June 8, 2005. At the time of this evaluation, Dr. Hooker also spoke with Ms. Argoe's husband who informed him that Ms. Argoe's behavior had become problematic over the last year. Dr. Hooker was told by Mr. Argoe that Ms. Argoe had been spending a great deal of money, had been very secretive and accusatory and that she was going out late at night by herself, flashing her jewelry without precautions as to her behavior. (Hooker Affidavit).

Defendant Hooker felt that Ms. Argoe was demonstrating manic symptoms and was putting herself at risk of harm in that she showed no insight or awareness as to the risks of her behavior nor did she have insight into the concerns of her family. Therefore, based on his assessment, Dr. Hooker was of the opinion within a reasonable degree of medical certainty that Ms. Argoe possessed a substantial risk of physical harm to herself and that involuntary emergency hospitalization was necessary. (Hooker Affidavit).

For these reasons, Ms. Argoe was referred to the Aurora Pavilion at Aiken Regional Medical Center for involuntary emergency admission. After Dr. Hooker's evaluation and Ms. Argoe's subsequent referral to Aurora Pavilion, Dr. Hooker had no further involvement with Ms.

Argoe or her family. (Hooker Affidavit). Defendant Dr. Mobley was not involved in any of these proceedings or events. (Mobley Affidavit).

Because of insurance coverage issues, the next day Ms. Argoe was transferred to Three Rivers Behavioral Health, where Dr. Mobley became her admitting and attending psychiatrist pursuant to Ms. Argoe's involuntary commitment papers. Dr. Mobley performed a psychiatric evaluation on June 10, 2005. Ms. Argoe's diagnoses were bipolar I, manic with psychotic features, rule out OCD [obsessive compulsive disorder]. At that time, Dr. Mobley determined that Ms. Argoe's global assessment of functioning (GAF) score was 25 which was indicative of behavior considerably influenced by delusions and impairment in judgment. Additionally, an internist, Dr. Nehal Desai evaluated Ms. Argoe at Dr. Mobley's request and also found symptoms consistent with paranoid ideation and bipolar disorder. (Mobley Affidavit).

On June 13, 2005, Three Rivers Behavioral Health filed a Notification of Emergency Admission and Appointment of Designated Examiners form with the Probate Court listing Dr. Mobley and Ann Burrell, R.N., as designated examiners. (Mobley Affidavit). The Honorable Marvin Lawson, Judge of Probate, Darlington County, by order dated June 14, 2005, appointed and ordered Ms. Burrell and Dr. Mobley to examine Ms. Argoe. (Mobley Affidavit). Subsequently, Dr. Mobley filed her report as a designated examiner with the Probate Court on June 20, 2005. (Mobley Affidavit).

Pursuant to a full hearing on June 21, 2005 and after notice and appointment of counsel for Ms. Argoe, Judge Lawson determined Ms. Argoe to be mentally ill and a danger to herself or others. By Order of June 21, 2005, Judge Lawson ordered that Ms. Argoe be committed to a mental health facility for in-patient care and treatment and additionally, ordered that upon her discharge she was to follow-up with her local mental health center for continuing outpatient treatment for a period of 12 months. (Mobley Affidavit).

Because Ms. Argoe was refusing medications, on June 13, 2005 Dr. Mobley asked for a second opinion and consult with Dr. Heath as to the appropriateness of forced medication administration in Ms. Argoe's situation. Dr. Heath personally evaluated Ms. Argoe on June 14, 2005 and specifically noted her continued paranoia and hypomanic mood. (Mobley Affidavit).

Dr. Mobley provided care and treatment to Ms. Argoe at Three Rivers pursuant to the Orders of the Probate Court until June 27, 2005 when co-Defendant Dr. Cheryl Dodds assumed Ms. Argoe's care. Ms. Argoe ultimately consented to taking her prescribed medications beginning on or about June 16, 2005. Ms. Argoe improved and became stable on her medication regimen and was discharged to live with her son on July 20, 2005. Dr. Dodds' discharge diagnosis was bipolar disease, manic with psychosis and was consistent with Ms. Argoe's initial diagnoses as recorded by other evaluating and treating physicians. (Mobley & Dodds Affidavits).

While Ms. Argoe was hospitalized at Three Rivers pursuant to court order, James F. Walsh, Jr. (Walsh), an attorney and another Defendant in this case, filed Petitions on behalf of Ms. Argoe's husband and son with the Orangeburg County Probate Court for the appointment of a conservator and a guardian for Ms. Argoe. (Walsh Affidavit). On July 8, 2005, The Honorable Pandora Jones-Glover, Judge of Probate, Orangeburg County appointed Drs. Dodds and Mobley as physician/examiners for Ms. Argoe. They were to provide the Probate Court an Examiner's Report and a Doctor's Affidavit Regarding Capacity as is required by the Probate Court in guardianship and conservatorship proceedings.

Although no longer Ms. Argoe's treating psychiatrist, an Examiner's Report and Doctor's Affidavit Regarding Capacity dated July 13, 2005 show that Dr. Mobley examined Ms. Argoe on July 11, 2005. Subsequent to that examination and based upon her previous examinations and involvement in Ms. Argoe's care as a treating physician, Dr. Mobley completed and signed the Examiner's Report and Doctor's Affidavit Regarding Capacity on July

13, 2005. However, these documents apparently were not used in any definitive probate proceedings regarding Ms. Argoe as a final hearing was never held regarding the petitions for guardianship and/or conservatorship. Dr. Mobley did not see Ms. Argoe as a treating psychiatrist after June 27, 2005 and was not involved in any subsequent Probate or Family Court hearings involving the Argoes. (Mobley Affidavit). According to Walsh's Affidavit, the procedure he used to obtain the completed forms regarding Ms. Argoe is the standard and customary procedure and practice used by attorneys representing Petitioners and/or Respondents in guardianship and conservatorship proceedings in Orangeburg County. He stated that the attorneys assist the Probate Court in obtaining the necessary and required information to properly adjudicate the matter before the Court.

Additionally, according to Walsh's Affidavit, whether or not he received the forms directly from the doctors or from the Probate Court, as the attorney for the Petitioners, Walsh was authorized and entitled to receive a copy of the reports as the attorney representing the Petitioners in the guardianship and/or Conservatorship action. (Walsh Affidavit). These reports and forms were never used outside of the Probate Court and were never published or publicized by Walsh to any third party other than those persons involved in the Probate Court matters and in defending the Beaufort County and Lexington County civil lawsuits. Ultimately a hearing appointing a permanent guardian and conservator for Ms. Argoe was never held. (Walsh Affidavit).

Drs. Hooker and Mobley did not release any of Ms. Argoe's mental health records to any third party, including any Probate or Family Courts, they have not released any reports, information and/or opinions about Ms. Argoe's mental health diagnoses or treatment to anyone other than to treating facilities, the Orangeburg County Probate Court and/or the Darlington

County Probate Court as ordered to do or to anyone who would not otherwise have access to the records. (Hooker and Mobley Affidavits).

Except for obtaining information regarding Ms. Argoe's medical history from members of Ms. Argoe's family, Drs. Hooker and Mobley have never spoken to or with any of the Defendants or conspired with any of the Defendants about helping Ms. Argoe's husband and son to take real and personal property from Ms. Argoe or to secure insurance reimbursement for Ms. Argoe's medical treatment to enrich any Defendant. Dr. Mobley did discuss Ms. Argoe's psychiatric care with Dr. Dodds. (Hooker and Mobley Affidavits). Finally, in her Affidavit, Dr. Mobley stated that she did not violate any standards of medical practice in her care and treatment of Ms. Argoe that are a proximate cause of her alleged injuries and damages. (Mobley Affidavit).

Ms. Argoe disputes the above facts and contends that all of her Probate Court hearings were handled improperly, were illegal and failed to comply with State statutes, and therefore, the Orders issued by the Courts are void. She further contends that Dr. Mobley did not follow the instructions of the Orangeburg County Probate Court Order appointing her as an examiner and that Drs. Hooker and Mobley misdiagnosed her mental condition. Finally, Ms. Argoe contends that Drs. Hooker and Mobley conspired with the other Defendants to use Ms. Argoe's mental health diagnosis to involuntarily commit her to Three Rivers during which time her husband and son took possession of and title to her real and personal property. However, Ms. Argoe has not submitted any substantive proof or evidence to support these contentions or to refute the facts as stated herein other than the allegations in her Compliant, the documents and records mentioned above and the arguments of her attorney.

At the hearing and prior to oral arguments from counsel, Plaintiff by and through her counsel and with the consent of Defendants' counsel voluntarily dismissed the following causes

of action. As to Defendant Dr. Hooker, Plaintiff dismissed causes of action: #1 (Intentional Infliction of Emotional Distress/Outrage), #4 (Assault and Battery), #13 (Abuse of Process), #14 (Defamation), #15 (Invasion of Privacy) and #16 (Public Disclosure of Private Fact) of the Complaint. As to Defendant Dr. Mobley, Plaintiff dismissed causes of action: #1 (Intentional Infliction of Emotional Distress/Outrage), #3 (False Imprisonment), #11 (Conspiracy) and #13 (Abuse of Process) of the Complaint.

Based upon the documents submitted to the Court, the arguments of counsel and South Carolina case law and statutes, I find as follows.

As to the remaining causes of action against Dr. Hooker:

1. False Imprisonment (3rd cause of action).

Ms. Argoe alleges that Dr. Hooker caused her to be held, restrained and confined involuntarily in Three Rivers from June 8, 2005, to July 20, 2005.

I find that Dr. Hooker was acting pursuant to an Order of Detention from the Orangeburg County Probate Court and an Application for Involuntary Emergency Hospitalization for Mental Illness and did not have a duty to investigate the validity of the order or to determine whether or not the procedures related to the order or Application for Emergency Hospitalization were legal and proper. Further, after a full hearing regarding the events at issue held June 21, 2005, Ms. Argoe was indeed determined to be mentally ill and in need of involuntarily commitment for continued treatment by Order of the Darlington County Probate Court of the same date.

As Dr. Hooker was acting pursuant to an Order of Detention form the Probate Court and an Application for Involuntary Emergency Hospitalization for Mental Illness, he is entitled to absolute quasi-judicial immunity as a court-appointed physician pursuant to Vaughn v. McLeod Regional Medical Center, 372 S.C. 505, 642 S.E.2d 744 (2007). In Vaughn, the Supreme Court of South Carolina held that a doctor acting as a court appointed medical examiner in a guardianship

proceeding was protected by common law absolute quasi judicial immunity in a negligence action stemming from his determination that a patient was permanently incapacitated. See also, Fleming v. Asbill, 326 S.C. 49, 43 S.E.2d 751 (1997) citing Hartline v. Clary, 141 F.Supp. 151 (E.D.S.C. 1956) for the proposition "judicial officers, quasi judicial officers, judges, prosecuting attorneys, executive and ministerial officials of the government are immune from civil suit for acts committed by them in the performance of their official duties." "Court appointed examiners are essentially an arm of the judiciary period" Vaughn at 512, 748. The Court stated as its basis for its determination that:

> Quasi judicial immunity for acts performed within the scope of appointment is necessary to protect the Court appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the . . . proceedings . . . if [they] are not afforded immunity, the exposure to liability will have a chilling affect on future acceptances of such appointments.

Id.

Further, I find that "Where one is arrested by lawful authority, an action for false imprisonment cannot be maintained." Manley v. Manley, 291 S.C. 325, 353 S. E. 2d 312 (1987) (involuntary commitment of mother by father and children in conjunction with psychiatrist in belief that mother suffered from a mental disorder after threatening to take her own life was pursuant to lawful order of probate judge and, hence, was not a basis for recovery on claim of false imprisonment).

As a matter of law, this cause of action is dismissed.

2. Conspiracy (11th Cause of Action).

Ms. Argoe alleges that all the Defendants combined and agreed to ignore Ms. Argoe's and others' assertions that her husband was providing false information regarding Ms. Argoe's behavior and symptomatology in order to hold her for an extended period of time in Three Rivers and to secure reimbursement for unwarranted medical treatment to unjustly enrich Three Rivers.

I find that Dr. Hooker evaluated Ms. Argoe pursuant to court orders. Plaintiff has presented no evidence that Dr. Hooker talked with any other Defendants about conspiring to take property away from Ms. Argoe or about enriching any Defendant. Further, there were documented psychiatric reasons for Ms. Argoe's involuntary admission for further evaluation and treatment besides the medical history given by her family. Therefore, I find that Dr. Hooker was acting within the scope of his duties, pursuant to court orders and therefore, he is protected from civil liability by absolute quasi-judicial immunity under Vaughan, supra.

Additionally and as to the conspiracy claim specifically, I find that the elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006) (citations omitted). Ms. Argoe cannot establish by direct or circumstantial evidence the required elements of civil conspiracy and further, cannot show any wrongful intent by Dr. Hooker to injure her. Finally as noted above, the actions of Dr. Hooker were pursuant to court order and an Application for Involuntary Emergency Hospitalization for Mental Illness.

Also, I find that Plaintiff has not demonstrated that she suffered special damages related to her civil conspiracy claim. A Plaintiff in a civil conspiracy claim must describe damages that occurred as the result of the conspiracy in addition to any damages alleged as a result of other claims. Such damages allegedly resulting from the conspiracy must not overlap with or be subsumed by those resulting from the other claims. Sheek v. Lee, 289 S.C. 327, 345 S.E.2d 496, 497 (1986); Todd v. S.C. Farm Bureau Mutual Insurance Company, 276 S.C. 284, 278 S.E.2d 607 (1981). Plaintiff seeks the same damages in her civil conspiracy claim as she seeks in the other tort claims she has alleged and thus, has failed to set forth any special damages that are distinguishable from the damages alleged in her other claims.

As a matter of law, this cause of action is dismissed.

3. Negligence/Gross Negligence (2nd cause of action).

Ms. Argoe alleges that Dr. Hooker was negligent in not appropriately examining her and/or investigating her symptoms in the light of alleged marital difficulties and the possibility that her husband and son were providing false information. Ms. Argoe alleges that Dr. Hooker knew or should have known that the information provided to him did not rise to the level necessary to justify a medical determination of involuntary commitment.

In support of her claim, Ms. Argoe submits the Affidavit of psychiatrist Dave M. Davis, M.D., who opines that Dr. Hooker's recommendation for Ms. Argoe's involuntary emergency hospitalization was not sufficiently supported by a psychiatric medical evaluation record that would have justified Ms. Argoe's involuntary commitment.

I find that the record shows that Defendant Hooker obtained a complete medical workup on Ms. Argoe, including a CT scan of the head, prior to and in addition to his own psychiatric assessment of Ms. Argoe. Additionally, Dr. Hooker's role in this process was to protect Ms. Argoe and/or others from harm until she could be thoroughly evaluated at a psychiatric facility as to diagnoses and treatment, if needed.

Finally, I find that Dr. Hooker was acting pursuant to an Order of Detention from the Probate Court and an Application for Involuntary Emergency Hospitalization for Mental Illness and therefore, he is entitled to absolute quasi-judicial immunity as a court-appointed physician pursuant to Vaughn, supra. This is exactly the type of lawsuit that Vaughan protects against. As a matter of law, this cause of action is dismissed.

As to the remaining causes of action against Dr. Mobley:

1. Assault and Battery (4th cause of action).

Ms. Argoe alleges that during her admission at Three Rivers, Dr. Mobley forcefully medicated her through injections without her consent and against her will.

The South Carolina Supreme Court in Linog v. Yampolsky, 376 S.C. 182, 656 S.E.2d 355 (2008), held that no independent cause of action for medical battery exists in South Carolina and that "the patient must bring this claim under the medical malpractice framework. That is, a patient must show through expert testimony that the physician deviated from the relevant standard of care in failing to obtain proper consent, unless the subject matter lies within common knowledge."

Therefore, as a matter of law, this cause of action is dismissed as this cause of action does not state a cognizable claim.

2. Violation of S. C. Code Ann. Regs. 81.06(D) (8th Cause of Action).

Ms. Argoe alleges that as a Probate Court Examiner, Dr. Mobley allowed Ms. Argoe's confidential and private medical information to be released to Ms. Argoe's husband and son and their attorney, Walsh, and to the world, in violation of S. C. Code Ann. Regs. 81.06(D), which states "[a] physician shall respect the rights of patients, . . . , and shall safeguard patient confidence within the constraints of the law".

I find that the submission by Dr. Mobley of her reports were made within the scope of her court appointments pursuant to court orders and therefore, she is protected from civil liability by absolute quasi-judicial immunity under Vaughan, supra.

I find that Dr. Mobley was a validly appointed designated examiner for mental illness in regards to Ms. Argoe's full hearing held June 21, 2005 regarding her involuntary commitment as adjudicated in the Probate Court of Darlington County. Dr. Mobley provided only her report to the Court as was required. Further, under S.C. Code Ann. §44-22-90, such communications are an

exception to the privilege between patient and mental health provider. She did not release Ms. Argoe's medical or mental health records to anyone, including any Court. Dr. Mobley was subsequently and validly appointed a designated examiner as to Ms. Argoe's capacity by the Probate Court of Orangeburg County pursuant to guardianship and conservatorship proceedings in Orangeburg County that were being handled by attorney Walsh. Dr. Mobley completed the required report and forms and while the report may have been sent to attorney Walsh in regards to the guardianship and conservatorship petitions, apparently her report was not used in any definitive probate proceedings regarding Ms. Argoe as ultimately, a final hearing was never held regarding the petitions for guardianship and/or conservatorship. Further, whether or not Walsh received the forms directly from Dr. Mobley or from the Probate Court, as the attorney for the Petitioners, Walsh was authorized and entitled to receive a copy of Dr. Mobley's report.

As a matter of law, this cause of action is dismissed.

3. HIPAA Violation (9th Cause of Action).

Ms. Argoe alleges that by serving as a Probate Court Examiner, Dr. Mobley allowed Ms. Argoe's confidential and private medical information to be released to Ms. Argoe's husband and son and their attorney, Walsh, and to the world, in violation of HIPAA.

Based upon numerous Federal District Court and Federal Court of Appeals cases, I find that HIPAA does not contain any express language conferring privacy rights upon a specific class of individuals, and accordingly, does not provide a private cause of action. See Sweeney v. Department of Homeland Security, 248 Fed.Appx. 179, 2007 WL 2693016(C.A.Fed.), and Acara v. Banks, 470 F.3rd 569 (5th Cir. 2006).

As a matter of law, this cause of action is dismissed.

4. Defamation (14th Cause of Action).

Ms. Argoe alleges that she was defamed pursuant to the reports prepared by Dr. Mobley as a designated examiner regarding Ms. Argoe's mental health. I find that Dr. Mobley is entitled to absolute quasi-judicial immunity as a court-appointed physician for the reasons stated in Vaughan, supra.

Further in terms of the defamation action specifically, I find that the elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998) (Toal, J., concurring in result in separate opinion). The defamatory statement must be false and truth can be asserted as an affirmative defense. Id. (citations omitted). The second major element of defamation is an unprivileged publication to a third party. Id. (citation omitted).

I find that Dr. Mobley acted in good faith in dealing with Ms. Argoe's mental disorder subsequent to Ms. Argoe's commitment. Dr. Mobley's actions were confined in scope and purpose and performed in a proper manner pursuant to court order. Her reports as a court appointed designated examiner were not published to anyone other than the applicable probate courts and/or to attorney Walsh who was authorized and entitled to receive a copy of Dr. Mobley's report as attorney for the Petitioners seeking the appointment of a guardian or conservator for Ms. Argoe. There is no evidence that the communications/reports of Dr. Mobley exceeded their proper scope or purpose, or that the occasion for the communications was improper or that the publications were performed in an improper manner or to improper parties.

Therefore, I also find that the reports of Dr. Mobley are qualifiedly privileged pursuant to Manley v. Manley, and cannot be defamatory. "The essential elements of a conditionally privileged communication may accordingly be enumerated as good faith, an interest to be

upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits." Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987).

Additionally, S.C. Code Ann. §§44-22-90(2) & -100(2) provide exceptions that allow the disclosure of privileged psychiatric information in involuntary commitment proceedings, when a patient is diagnosed by a qualified professional as in need of commitment to a mental health facility for care of the patient's mental illness; and where a court directs that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure is contrary to the public interest, respectively.

As a matter of law, this cause of action is dismissed.

5. Invasion of Privacy (15th Cause of Action).

Ms. Argoe alleges that Dr. Mobley invaded her privacy by disclosing her confidential medical records and diagnoses without a release signed by her or without her consent, that the information and documents were false and that the information and documents were published to various Courts and attorneys not entitled to them.

I find that Dr. Mobley is entitled to absolute quasi-judicial immunity as a court-appointed physician for the reasons stated in Vaughan, supra.

Further, as to Ms. Argoe's cause of action for invasion of privacy specifically, I find that a cause of action for invasion of privacy can be found where there is "the wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities." Corder v. Champion Road Machinery, 283 S.C. 520, 324 S.E.2d 79 (1984).

I find that Dr. Mobley evaluated and treated Ms. Argoe pursuant to court orders and completed only the necessary paperwork and reports required by those orders. She did not release Ms. Argoe's medical or mental health records to anyone, including any court. Only her narrative report as a court appointed designated examiner was released. She did not "publicize" her reports or opinions to the "public at large", and Dr. Mobley cannot be held responsible if the information eventually became public through other individuals.

I find that because Dr. Mobley was acting pursuant to Probate Court orders, and her reports were provided only to the proper authorities and/or attorney Walsh who was authorized and entitled to receive a copy of Dr. Mobley's report, that she did not "wrongfully intrude" into Ms. Argoe's private activities and further, that the actions of Dr. Mobley do not rise to the level of "outrage".

As a matter of law, this cause of action is dismissed.

6. Negligence/Gross Negligence (2nd and 7th causes of action).

Ms. Argoe alleges that Dr. Mobley was negligent in not appropriately examining her, in not properly investigating her symptoms in view of her alleged marital difficulties and the possibility that her husband and son were providing false information, in failing to obtain sufficient testing and data to support a diagnosis of bipolar disorder, in failing to investigate issues identified by a consulting psychologist, Tami Leonhardt, and in subjecting her to unnecessary treatment. I find that the claims contained in the 2nd and 7th causes of action in the Complaint as they relate to Defendant Dr. Mobley sound in medical negligence.

To support her claims of medical negligence on the part of Dr. Mobley, Ms. Argoe, on May 8, 2008 submitted the Affidavit of psychiatrist Dave M. Davis, M.D., of Atlanta, Georgia. In his Affidavit, Dr. Davis opines that the medical record at Three Rivers does not contain sufficient testing and other data to support a diagnosis of bipolar disorder and that Ms. Argoe was not

provided with a thorough physical exam at Three Rivers. Dr. Davis also states that information regarding the Argoes' marital discord contained in the report of consultant psychologist, Tami Leonhardt, was not sufficiently investigated and that had this information been addressed it would have led to a more thorough evaluation of Ms. Argoe which would have revealed that the diagnosis of bipolar disorder was unsupported and that Ms. Argoe's treatment was inappropriate.

While the Court has some concerns as to the sufficiency of Dr. Davis' Affidavit in regards to its specificity in establishing the relevant psychiatric standard of care and the alleged breaches thereof by Dr. Mobley that are a proximate cause of Ms. Argoe's alleged damages, I find that at this time the Affidavit raises issues of material fact. Dr. Davis stated that his opinions were interim opinions and subject to modification upon receipt of additional information. Therefore, at this stage of the litigation and because further discovery is anticipated, including the taking of Dr. Davis' deposition where his opinions can be explored in more detail by counsel, the Court denies Defendant Mobley's motion for summary judgment as to Plaintiff's causes of action #2 and #7 of the Complaint.

The Court's present denial of Defendant Mobley's motion for summary judgment as to Plaintiff's causes of action #2 and #7 of the Complaint does not preclude Defendant Mobley from filing another motion for summary judgment at a later date as to these remaining medical negligence causes of action based upon new information obtained through further discovery and the deposition testimony of Ms. Argoe's expert.

IT IS, THEREFORE, ORDERED that Dr. Hooker's Motion for Summary Judgment is granted as to the causes of action for false imprisonment, conspiracy, and negligence/gross negligence and they are hereby dismissed, discontinued and forever ended with prejudice.

IT IS FURTHER ORDERED that the causes of action against Dr. Hooker for intentional infliction of emotional distress/outrage, assault and battery, abuse of process,

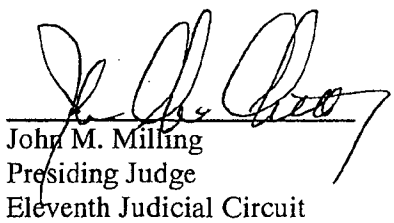
defamation, invasion of privacy and public disclosure of private fact are hereby dismissed, discontinued and forever ended with prejudice pursuant to consent of counsel for Plaintiff and Dr. Hooker.

IT IS FURTHER ORDERED that Dr. Mobley's Motion for Summary Judgment is granted as to the causes of action for assault and battery, violation of S. C. Code Ann. Regs. 81.06(D), violation of HIPAA, defamation and invasion of privacy and they are hereby dismissed, discontinued and forever ended with prejudice.

IT IS FURTHER ORDERED that the causes of action against Dr. Mobley for intentional infliction of emotional distress/outrage, false imprisonment, conspiracy and abuse of process are hereby dismissed, discontinued and forever ended with prejudice pursuant to consent of counsel for Plaintiff and Dr. Mobley.

IT IS FURTHER ORDERED that Dr. Mobley's Motion for Summary Judgment as to the causes of action for negligence and negligence/gross negligence is denied. After deposing Ms. Argoe's expert, Dr. Mobley has the right to file another Motion for Summary Judgment on the allegations of medical negligence/gross negligence.

AND IT IS SO ORDERED.



John M. Milling
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

June 27, 2008

PROBATE JUDGE
COUNTY

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
2008 AUG 25 AM 10: 51		
COUNTY OF DORCHESTER	)	**CASE NO. 2006-GC-18-00053**
	)	
IN THE MATTER OF	)	**ORDER**
MARTHA L. ARGOE	)	
	)	

BE IT REMEMBERED THAT THIS MATTER CAME BEFORE THIS COURT on July 25, 2008 by and through a Petition to Vacate Commitment Proceedings filed on behalf of Martha L. Argoe by and through her Attorneys, Jan L. Warner, Esquire and Matthew E. Steinmetz, Esquire.

Martha L. Argoe ("Petitioner") seeks to have this court void an Order of Commitment dated June 21, 2005 due to a violation of S.C. Code Ann. § 44-17-430 (1976). Petitioner argues the violation resulted in a lack of subject matter jurisdiction, thereby voiding all previous and subsequent actions of the Probate Courts.

FACTUAL/ PROCEDURAL BACKGROUND

This Petition stems from an involuntary commitment through Orangeburg County Probate Court that led to the treatment of Petitioner beginning June 9, 2005. The court finds the following facts with regards to this case:

(1) On June 6, 2005, an Application for Involuntary Emergency Hospitalization for Mental Illness was properly filed with the Orangeburg County Probate Court. Applicant, G. Lewis Argoe Jr., alleged facts substantial for issuance of an Order of Detention under S.C. Code Ann. § 44-17-430.
(2) On June 6, 2005, an Order of Detention was issued and signed by Judge Pandora Jones-Glover. The only evidence presented for this Court to consider as to the exact time of the issuance of the Order of Detention was a handwritten note on the upper right corner of the document showing a time of 3:10 p.m.
(3) The Order of Detention form provides language from the Code of Law that states "...provided the individual taken into custody shall have the right to representation by an attorney. If within the twenty-four (24) hours the person in custody is not examined by a licensed physician, or if upon examination, the physician does not execute the certification provided for in Section 44-17-410(2), . . . the individual in custody shall be immediately released."
(4) On June 7, 2005, based on the valid Order of Detention, Petitioner was transported to the emergency room of The Regional Medical Center of Orangeburg. Medical records presented as evidence (Exhibit 8) for the first time at this hearing show that Petitioner was presented at approximately 3:35 p.m. for Mental Evaluation. Records further reflect and that she was not there on a voluntary basis.

(5) Furthermore, those same records from The Regional Medical Center contain doctor's notes which state, in relevant part, the following:

a. "Onset of symptoms reported as gradual, onset was approx. 1.5 years ago. Patient (Petitioner) currently has symptoms. Complaint is intermittent."
b. "She (Petitioner) was seen by Dr. Hooker today at Mental Health and he has sent her over for medical clearance with the understanding from him that if she can be cleared medically she is to be discharged and f/u (follow up) with him in the office tomorrow."
c. "Will d/c (discharge) to home to f/u (follow-up) with MHC."
d. "Patient's status is stabilized."
e. "Make sure you (Petitioner) follow up with your doctor tomorrow for a recheck."

(6) On June 7, 2005, Petitioner was discharged from The Regional Medical Center at approximately 5:12 p.m. and was returned home by the Orangeburg County Sheriff's Department.

(7) On June 8, 2005, Dr. Hooker, acting through Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to S.C. Code § 44-17-410(2). Two copies of this document were presented to the court by the Petitioner for consideration. The first (Exhibit 4) shows no date or time, the second document (Exhibit 7) showing a time of "3:00 p.m." and a date of "6/8/05." Both documents list Aurora Pavilion (a/k/a Aiken Regional) as the facility accepting Petitioner for further treatment.

(8) Despite the discrepancies on Part II of the Certificate of Licensed Physician as described immediately above, it is undisputed that on June 8, 2005 Petitioner was transported by law enforcement to Aurora Pavilion for involuntary treatment. All records indicate that this treatment was not voluntary and was based on the Part II document. Petitioner's medical records from that facility verify she was admitted on 6/08/05 at 17:45 (5:45 p.m.).

(9) On June 9, 2005, Petitioner was admitted to Three Rivers Treatment Facility. On that same date, Three Rivers completed the Notification of Emergency Admission and Appointment of Designated Examiners as required by S.C. Code Ann. § 44-17-410(3).

(10) On June 13, 2005, Orangeburg County Probate Court clocked in the Notification of Emergency Admission and Appointment of Designated Examiners. On that same date, Darlington County accepted the same under a change of venue from Orangeburg County. This change of venue is a standard practice allowed by Court Administration to improve judicial efficiency and reduce the costs associated with judges statewide traveling to hospitals across the state for a single hearing.

(11) On June 13, 2005 Darlington County appointed the two designated examiners as required by S.C. Code Ann. § 44-17-410 and issued an Order for Continued Hospitalization and for Hearing to be held on June 21, 2005. These actions are all in compliance with the S.C. Code.

(12) On June 14, 2005, Darlington County appointed Alvin Neal, Esquire, as the

AP

Court Appointed Attorney / GAL for Petitioner. Notice was given of the scheduled time and place for Petitioner's hearing pursuant to S.C. Code Ann. § 44-17-550.

(13) Two designated examiners, Dr. Phyllis Mobley and D. Ann Burrell, R.N., filed their reports within the time allotted by law. Both designated examiners found Petitioner needed continued involuntary inpatient care.

(14) On June 21, 2005, Petitioner attended and participated in a hearing with Judge Marvin Lawson of Darlington County and her court appointed counsel, Alvin Neal, Esquire. An Order for Continued Treatment was issued pursuant to S.C. Code Ann § 44-17-580 with mandatory outpatient treatment to follow at Orangeburg County Mental Health Facility for a period not to exceed twelve (12) months.

(15) Petitioner's ability to appeal this Order to the Court of Common Pleas expired fifteen (15) days from the time of the June 21, 2005 Order pursuant to S.C. Code Ann. § 44-17-620.

(16) Over a year later, on August 14, 2006, counsel for Petitioner submitted a Notice of Motion and Motion to Vacate All Proceeding Ab Initio, To Disqualify Pandora Jones-Glover, Probate Judge, From Presiding Over Any Proceedings With Regards To These Proceedings, And For Related Relief.

(17) On September 6, 2006 the S.C. Supreme Court appointed this court to hear any and all matters related to *In Re: Martha L. Argoe*

(18) Between September 29, 2006 and January 18, 2007, interested parties filed various pleading, motions, and actions in this and other courts. Petitioner and applicant/husband filed for a divorce, and Petitioner's counsel has filed a civil action with regards to this commitment.

(19) On January 8, 2007, this Court scheduled and heard a hearing on the Motion to Compel filed by James F. Walsh, Jr. as attorney for George Lewis Agroe, Jr. and George Lewis Argoe, III. Walsh sought production of all materials related to the involuntary commitment of Petitioner pursuant to Rule 37 of the South Carolina Rules of Civil Procedure.

(20) During this hearing, and by agreement of the parties, the court undertook an *in camera* review of the sealed involuntary commitment file from Orangeburg and Darlington Counties to determine if the documents were necessary "for the conduct of the proceedings before it" under S.C. Code Ann. § 44-22-100. By agreement of the parties, the court further sought to determine whether or not there were any violations of Petitioner's rights under S.C. Code Ann. § 44-17-410(3), § 44-17-420, § 44-17-430, or § 44-17-570, as cited in the Motion to Vacate.

(21) The involuntary commitment file reviewed did not contain evidence of Petitioner's first detainment and transport to The Regional Medical Center as described in (4),(5), and (6) above, nor did the file contain any information regarding Petitioner's admission to Aiken Regional (Aurora Pavilion) as described in (8) above, other than the listing of that hospital on Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to S.C. Code Ann. § 44-17-410(2) as described in (7) above.

GP

(22) As a result of the *in camera* review, an Order dated January 18, 2007 was issued, wherein the court denied the Motion to Compel and further determined that the documents established no evidence of Petitioner's rights being violated during the involuntary commitment procedure.

(23) On March 25, 2008, almost two years after the original Order of Commitment, Petitioner, by and through her attorneys, Jan L. Warner, Esquire, and Matthew E. Steinmetz, Esquire, filed a Petition To Vacate Commitment Based Upon Lack Of Subject Matter Jurisdiction. The said Petition alleges, in part, that Petitioner was transported under an invalid Order of Detention, thereby invalidating the Probate Court's subject matter jurisdiction over the case.

(24) Following the filing of the Petition to Vacate, Motions to Intervene were filed by interested partied including Molly Craig, Esq.; Elloree Gaines, Esq.; Elizabeth W. Ballentine, Esq. of Hood Law Firm on behalf of Dr. Steiner; George Beighley, Esq. of Richardson Plowden on behalf of Aiken Regional Medical Center; Michael Barfield, Esq. of Barnwell Whaley on behalf of James F. Walsh, Jr.; William Davidson, Esq. of Davidson, Morrison & Lindemann on behalf of Dr. Glenn Hooker and Dr. Phyllis Bryant-Mobley; and James E. Parham, Esq. on behalf of Dr. Cheryl C. Dodds.

ISSUES

For purposes of judicial efficiency and by agreement of the parties, the Court first sought to determine whether or not the family members, doctors, and hospitals being sued in a civil action outside the jurisdiction of this court but directly related to Petitioner's involuntary commitment and treatment had the right to intervene, by and through their attorneys, in this hearing to the extent its outcome could alter agreements and filings already made in other courts. This Court granted the motions to intervene and accepted testimony only as it related to the questions raised below.

Counsel for Petitioner seeks to have this court revisit the 2005 commitment of Petitioner based on an alleged procedural defect in violation of S.C. Code Ann. § 44-17-430. Petitioner alleges that, while she was lawfully transported to The Regional Medical Center on June 7, 2005 based on the Orangeburg County Probate Court's Order of Detention, her transport for treatment to Aiken Regional (Aurora Pavilion) on June 8, 2005 was not valid. Petitioner further alleges that this unlawful transport also invalidates the Probate Court's subject matter jurisdiction. Petitioner bases this argument on a plain reading of the face of the Order of Detention, based on the above cited Code section, which reads that "...If within the twenty-four (24) hours the person in custody is not examined by a licensed physician, or if upon examination, the physician does not execute the certification provided for in Section 44-17-410(2), . . . the individual in custody shall be immediately released." In this case, Petitioner argues that Petitioner was transported twice under the same Order of Detention and that the discharge from the first facility rendered the Order of Detention invalid.

9P

The court will address the issues as follows:

(1) Do the South Carolina Rules of Civil Procedure, specifically Rule 60, allow Petitioner to seek relief from an Order of Commitment in the Probate Court in this case?
(2) If so, was there a procedural deviation from the Code?
(3) Finally, would a procedural deviation force the court to vacate all proceedings due to lack of subject matter jurisdiction?

APPLICATION OF S.C. RULES OF CIVIL PROCEDURE

Issue: Do the South Carolina Rules of Civil Procedure, specifically Rule 60, allow Petitioner to seek relief from an Order of Commitment in the Probate Court in this case?

SCRCP Rule 81 states that the Rules of Civil Procedure shall apply in the Probate Courts to the extent they are not inconsistent with the statutes and rules governing our Court. In this case, these rules provide the only framework by which we can determine the case, and they are not inconsistent with any other rules specific to this court.

SCRCP Rule 60(b) sets forth the circumstances under which the Petitioner can seek relief from a judgment or order of this Court outside of the appeals process and requires a showing of one of five reasons before the court may grant such relief. Under this rule, three of the reasons allowing a court to grant relief from a judgment include: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); and (3) fraud, misrepresentation, or other misconduct of an adverse party. Rule 60(b) requires that a motion based on any of these reasons shall be made not more than one year after the judgment, order, or proceeding was entered or taken.

In this case, Petitioner filed her original Motion to Vacate on August 14, 2006, which is outside the one year time limit allowed for relief from the Order for Commitment dated June 21, 2005. Petitioner's second Petition to Vacate, which led to today's hearing, was filed on March 25, 2008, twenty-one (21) months after the original Order and fourteen (14) months after the previous Order of this Court first addressing this issue. For this reason, this court cannot consider any arguments made under Rule 60(b) subsections (1),(2), or (3).

Rule 60(b)(4) however, is not bound by these time constraints. The court is given the discretion to determine whether or not the motion is made in a "reasonable time." For purposes of this case and due in part to the mental diagnosis of the Petitioner, ongoing litigation in other courts, difficulty in obtaining documents of this nature, and

the fact that this file had to be transferred to another jurisdiction, I find the Petitioner's argument under subsection (4) meets the "reasonable" requirement. While the Petitioner, both by memorandum and in court, seems to argue that lack of subject matter jurisdiction can be raised at any time and outside the scope of Rule 60(b), it is this Court's belief that the very definition of "void" under Rule 60(b) "encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fid. and Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). This court, therefore, will entertain and analyze Petitioner's argument pursuant to Rule 60(b)(4).

APPLICATION OF S.C. PROBATE CODE

Was there a procedural deviation from the code?

Petitioner's argument focuses exclusively on S.C. Code Ann. § 44-17-430. Petitioner contends that all proceedings which occurred after Petitioner's June 7, 2005 discharge from The Regional Medical Center are "fatally defective and void" because the Probate Court lacked personal jurisdiction over Petitioner and subject matter jurisdiction over the issues. I disagree. Petitioner's argument fails for the following reasons:

Petitioner makes the assumption that she was transported on June 8, 2005 using the same Order of Detention issued by the Orangeburg County Probate Court on June 6, 2005; however, this fact is not substantiated by the evidence. In fact, a close look at the documentation shows that when transported on June 7, 2005 to The Regional Medical Center, Petitioner admitted to symptoms, communicated with the staff that she was to follow up with Dr. Hooker at the Orangeburg Area Mental Health Clinic the following day, and stated that Dr. Hooker "sent her over for medical clearance." Whether or not Petitioner followed up as directed by The Regional Medical Center is unknown.

However, the following day, on June 8, 2005 it was Dr. Hooker who completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to S.C. Code § 44-17-410(2). This certification is significant, as it triggers S.C. Code § 44-17-440, which grants state or local law enforcement three days from the date of said certification to transport the person to the hospital designated by the certificate, which in this case was Aurora Pavilion (a/k/a Aiken Regional). There is substantial evidence to demonstrate that when Petitioner was transported involuntarily on June 8, 2005, such transport took place under S.C. Code § 44-17-440, as opposed to resulting from a re-use of the Order of Detention which may or may not have been valid.

Petitioner argues to the Court that at least one copy of the Certificate of Licensed Physician Examination for Emergency Admission lacked a date and time of completion to verify this information; however, a second copy was offered (Exhibit 7)

which corrected the error. In addition, the second copy was consistent with the filings of the Darlington County Probate Court, which entered the Order of Commitment. Furthermore, no evidence was entered to contradict that Dr. Hooker's certificate was filed timely and prior to Petitioner's transportation to Aurora Pavilion. While it is regrettable that incomplete forms or illegible handwriting can lead to confusion, costly litigation, and incomplete information, this in and of itself is not significant enough to vacate this proceeding or overrule the multiple findings of probable cause or doctor's testimonies that lead to Petitioner's court ordered treatment. For the reasons above, I continue to find that no procedural error existed under the S.C. Probate Code.

SUBJECT MATTER JURISDICTION

Would a procedural deviation force the court to vacate all proceedings due to lack of subject matter jurisdiction?

While this court will hold that no procedural error existed under the S.C. Probate Code, I believe it is prudent for the purpose of explanation to address the issue of whether or not a procedural deviation under these statues would force a court to vacate all proceedings due to lack of subject matter jurisdiction. I do not believe it would.

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Dove v. Gold Kist*, 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (citations and internal quotations omitted). In a 2001 case decided by the S.C. Supreme Court, the Court held that the State's failure to bring a case to trial within the sixty day time period required in S.C. Code Ann. § 44-48-90 did not result in the trial court losing jurisdiction to hear the case. *In re Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001). Although Matthews argued that the State's failure should result in lack of jurisdiction, the Supreme Court explained as follows:

> "However, we find the sixty day time period ... is not a jurisdictional requirement. Matthews should have filed a motion to dismiss when the State failed to bring the case to trial within sixty days without asking for a continuance. By failing to make a motion to dismiss, Matthews waived his right to challenge the State's failure to comply with the requisite time period.
>
> Therefore, we hold the State's failure to comply with the time period set forth in the section, when a proper continuance has not been issued, does not deprive the court of subject matter jurisdiction to hear the case. When the sixty day period has passed, and no continuance has been granted, the proper procedure for a respondent to follow is to file a motion to dismiss." *Id.* at 644.

Following the line of thinking in *Matthews*, I do not believe that lack of subject matter jurisdiction could have prevailed in this case even if a procedural error was found.

THEREFORE IT IS the Order of this Court that:

The Motions to Intervene be granted.

The Petition to Vacate Commitment Proceedings be denied.

IT IS SO ORDERED.

T. Provence

TIFFANY PROVENCE
JUDGE OF PROBATE
DORCHESTER COUNTY

August 25, 2008
St. George, SC

CERTIFIED TRUE COPY

Rebecca K Marchant
Dorchester Co. Probate Court

TP

PROBATE JUDGE
DORCHESTER COUNTY
2007 JAN 18 PM 2:29

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF DORCHESTER) CASE NUMBER 2006-GC-18-00-045
)
IN THE MATTER OF)
Martha L. Argoe)
) ORDER

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W P & S LLP
LUERLAW SERVICES
OF SC, PA

BE IT REMEMBERED THAT THIS MATTER CAME BEFORE THIS COURT by and through a motion to compel. The Petitioner in that motion is Mr. Argoe with James Walsh, Jr. as his counsel.

The court denies the motion to compel the involuntary commitment records of Martha L. Argoe due to the fact that the information contained therein is protected by S.C. Probate Code §44-23-1100. After consideration of the exceptions provided by S.C. Probate Code §44-22-100, and a through and confidential review of the file, there is nothing contained therein that the Petitioner cannot obtain through other means including examination of documents already in their possession. The fact that the designated examiners who were treating the client during her admission were appointed by the court as a result of the Petition to Appoint a Guardian/Conservator, and filed information identical to and more in depth than what is contained in the involuntary commitment file makes the motion to compel moot.

By agreement of the parties, the court further reviewed the involuntary commitment file for determination of facts necessary to proceed with a future motion to vacate as filed with this court on September 29, 2006 by Mr. Jan Warner, attorney for Mrs. Argoe. The review was to determine whether or not there were any violations of Mrs. Argoe's rights under S.C. Probate Code §44-17-430, S.C. Probate Code §44-17-410(3), S.C. Probate Code §44-17-570, or S.C. Probate Code §44-17-420 as cited in the Motion to Vacate. The court's review found that proper procedure was followed through each step of the involuntary commitment and that no grounds exist to challenge the previous Order of the Orangeburg County Probate Court with regards to that commitment. Issues surrounding the use of the designated examiners in the Guardianship/Conservatorship proceedings

as a ground for a Motion to Vacate were not addressed at this time.

During the course of the hearing and with consent of the parties, the court also made a determination as to the status of the Conservatorship and Guardianship files. The status of each file is as follows:

The Conservatorship:

James Walsh, Jr., attorney for George Argoe, Jr. (husband of the protected person), filed the Summons and Petition for appointment of Conservator on June 7, 2005. The Petition requested that George Argoe, III(son of the protected person), be appointed conservator for Martha Argoe. On that same date, George Argoe III accepted Service of the Petition and James Jackson, Jr., was appointed the GAL for Martha Argoe in this matter. On July 8, 2005 Cheryl Dobbs and Phyllis Mobley, members of her treatment team at Three Rivers were appointed designated examiners in this matter. There is a question as to whether or not the selection of the examiners who were treating her during her commitment presents a conflict of interest under S.C. Probate Code §62-5-407(b).

On August 1, 2005, a letter was sent to attorney Walsh and James Jackson notifying them that a hearing was scheduled for September 28, 2005. At the request of the moving party, the hearing was terminated and an Order for Dismissal was signed by Judge Jones-Glover on February 9, 2006.

On April 12, 2006 a second Summons and Petition was filed by attorney Walsh on behalf of the husband, Mr. Argoe Jr., asking that the son, George Argoe, III, be appointed temporary conservator and that a protective order be issued for Mrs. Argoe. The court again requested two designated examiners to examine and report to the court on Mrs. Argoe's current condition. James Elmore and Charles Reamy were appointed as designated examiners from the Coastal Empire CMHC to examine Mrs. Argoe on March 30, 2006. Again, there is a possible conflict of interest in that these designated examiners were from the outpatient facility responsible for her current care.

On May 31, 2006, pursuant to S.C. Probate Code §62-5-408, Orangeburg County appointed George L. Argoe III as temporary conservator with restrictions including termination of this appointment after 45 days without a full hearing. At this time, no hearing was held, no notice was given, and no report from the designated examiners was received as they are not required for an emergency proceeding. The temporary Conservatorship expired 45 days later and a full hearing, including Mrs. Argoe was never scheduled.

The Guardianship:

James Walsh, Jr., attorney for George Argoe, Jr., also filed a Summons and Petition on July 11, 2005 requesting the court appoint George Argoe, III to be appointed as Guardian for his mother, Martha Argoe. Designated examiners and a GAL were already in place due to the Petition for Conservatorship (see above).

Orangeburg County appointed a temporary guardian, George Argoe, III on July 19, 2005 for the purpose of making certain medical decisions for Martha Argoe. The temporary guardian's appointment was to be terminated 45 days from the date of appointment. This appointment was issued on an emergency basis and was to be reviewed in 30 days pursuant to S.C. Probate Code §62-5-310(d).

On August 1, 2005, Orangeburg County Probate Court notified James F. Walsh and James B. Jackson that a hearing was scheduled for September 28, 2005 and for parties to file proof of service of Summons, Petitions and Notices of hearing. S.C. Probate Code §62-1-401.

On September 1, 2005, husband's attorney (Walsh) requested that the hearing be continued due to Mrs. Argoe's improved mental status. A note was attached requesting the court to hold the matter open for six months from the original appointment.

On January 23, 2006, six months from the original appointment, the file was closed and an Order was signed by Judge Jones-Glover which terminated the appointment of guardian due to the time expiring. Copies of this Order were sent to George Argoe, Jr., George Argoe III, and Attorney Walsh.

PROBATE JUDGE
DORCHESTER COUNTY

2007 JAN 18 PM 1:29

THEREFORE IT IS the Order of this Court that

The Motion to Compel be dismissed due to the fact that the information within has been deemed moot.

While Judge Jones-Glover had statutory authority in appointing a temporary Guardian and Conservator, once those appointments expired and no further action was taken, they were dismissed and/or administratively closed by the court.

There was no improper release of information from Mrs. Argoe's commitment file by her attorney or another court. The information obtained by the adverse party was a result of the appointment of her treatment team to serve as a designated examiner in a separate action seeking to have her declared incompetent. Whether or not this is a violation of Mrs. Argoe's rights or a violation of S.C. Probate Code §62-5-407(b) is not a matter before this court.

As of January 10, 2007, this court holds that any previous petitions for appointment of either Guardian or Conservator in this file are considered void and of no legal significance due to the fact that a full hearing on the issues, with notice to Mrs. Argoe and an opportunity for her to present her own evidence was never presented. Further actions to declare her incompetent will need to proceed with a new petition filed in this court.

IT IS SO ORDERED.

CERTIFIED TRUE COPY

Robin Waggoner

Robin Waggoner
Administrative Assistant
Dorchester Co. Probate Court

January 18, 2007
St. George, SC

T. Provence

Tiffany Provence, Judge of Probate

STATE OF SOUTH CAROLINA)
COUNTY OF O'Berry)

IN THE PROBATE COURT

EX PARTE:
G. Lewis Argoe
(Applicant)

IN THE MATTER OF:
Martha Argoe
(A Person Alleged to be Mentally Ill)

NOTIFICATION OF EMERGENCY ADMISSION
APPOINTMENT OF DESIGNATED EXAMINERS

TO THE JUDGE OF PROBATE COURT FOR THE ABOVE-NAMED COUNTY:

YOU ARE HEREBY NOTIFIED:

(1) That the above-named Applicant filed an application for Emergency Admission alleging that the above-named person is mentally ill and because of such condition is likely to cause serious harm, as defined in Section 44-23-10 (2), S.C. Code, 1976, as amended, if not immediately hospitalized.

(2) That the above-named person alleged to be mentally ill was examined by a licensed physician, whose Certificate is attached hereto.

(3) As a result thereof, he/she was admitted to Three Rivers
(NAME OF HOSPITAL OR FACILITY)

on the 9 day of June, 2005, in accordance with Section 44-17-410, S.C. Code, 1976, as amended.

NOW THEREFORE, pursuant to Section 44-17-410(3), S.C. Code, 1976, as amended, the undersigned has forwarded to you the Application and Certificate of Licensed Physician; and requests the appointment of the two designated examiners listed below:

Dated this 10 day of June, 2005.

Janet Holmes
(SIGNATURE OF MENTAL HEALTH REPRESENTATIVE)

Janet Holmes
(TYPED NAME)

THREE RIVERS CENTER FOR BEHAVIORAL HEALTH
(NAME OF INSTITUTION)
2900 SUNSET BOULEVARD
WEST COLUMBIA, SC 29169
(ADDRESS)

796 9911
(TELEPHONE)

FILED
05 JUN 13 PM 12:22
MARION M. BROWN
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

APPOINTMENT OF TWO DESIGNATED EXAMINERS

IT IS ORDERED that Phyllis Mobley, a licensed physician and Ann Bushell, RN shall examine the person alleged to be mentally ill. A report must be submitted to the Court within seven days from the date of admission as to the mental condition of said person alleged to be mentally ill and his/her need for treatment.

Dated this 13th day of June, 20 05,

Darlington, South Carolina.

Marion Brown
JUDGE OF PROBATE COURT

7456-P-009
CONFIDENTIAL

STATE OF SOUTH CAROLINA)
COUNTY OF Darlington)

IN THE PROBATE COURT

EX PARTE:)
G. Lewis Argoe)
(Applicant)

IN THE MATTER OF:)
Martha Argoe)
(A Person Alleged to be Mentally Ill)

ORDER FOR CONTINUED HOSPITALIZATION AND FOR HEARING

Upon reviewing the Application for Emergency Admission, the Certificate of Licensed Physician, and the additional documents submitted by the treatment facility (if any) in this matter, I find in these documents evidence that the above-named person is mentally ill and in need of emergency hospitalization. Based on that evidence I determine that there is probable cause to continue the emergency detention of the above-named person pursuant to the provisions of Section 44-17-410, S.C. Code, 1976, as amended.

IT IS SO ORDERED:

That said person be detained at Three Rivers (NAME OF HOSPITAL OR FACILITY) until the 21st day of June, 20 05, at 9:15 o'clock, a. m., at which time he/she will be brought before this court so that a full hearing into his/her mental condition can be held.

Dated this 13th day of June, 2005, Darlington, South Carolina.

Marvin Dawson
JUDGE OF PROBATE COURT

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

IN THE PROBATE COURT

EX PARTE:)
_____)
(Applicant)

IN THE MATTER OF:)
_____)
(A Person Alleged to be Mentally Ill)

ORDER FOR RELEASE BASED ON NO PROBABLE CAUSE FOR EMERGENCY ADMISSION

Upon reviewing the Application for Emergency Admission, the Certificate of Licensed Physician, and the additional documents submitted by the treatment facility (if any) concerning the above-named person, I find that probable cause does not exist to continue the emergency detention of the above-named person pursuant to the provisions of Section 44-17-410, S.C. Code, 1976, as amended.

IT IS SO ORDERED:

That the Application herein be dismissed and that said person be released from the facility in which he/she is presently detained.

Dated this _____ day of _____, 20_____, _____, South Carolina.

_____
JUDGE OF PROBATE COURT

7456-P-010
CONFIDENTIAL

STATE OF SOUTH CAROLINA

County of _____

IN THE PROBATE COURT

IN THE MATTER OF:

_____

Alleged Mentally Ill Person

ORDER OF DETENTION

SCDMH FORM
JAN 69 (REV JUNE 91) M-116 (CG 12/99)
MH-FCC-2

Ex Parte:

_____

Applicant

In the Matter of:

_____

Person Alleged to be Mentally Ill

STATE OF SOUTH CAROLINA

County of _____

_____

being duly sworn, says that he took the above-named allegedly mentally ill person into custody pursuant to this order on the _____ day of _____ 20 _____ , at _____ a.m./p.m. and transported him to _____ located in _____ South Carolina

_____

Sworn to before me this _____ day of _____, 20 _____

_____ (L.S.)

Notary Public for South Carolina

NA

ATE OF SOUTH CAROLINA

JNTY OF Darlington

IN THE PROBATE COURT

PARTE:

G. Lewis Argoe, Jr.
(Petitioner / Applicant)

JUDGEMENT AND ORDER

THE MATTER OF:

Martha L. Argoe
(A Person Alleged to be Mentally Ill)

er a full hearing on the issues involved herein and consideration of the testimony and record,

IS ORDERED AND ADJUDGED:

That the above-named person is mentally ill and,

ike through a., or b., or leave both if applicable.)

a. Because of ~~his~~/her mental condition lacks sufficient insight or capacity to make responsible decisions with respect to ~~his~~/her treatment; ~~or~~ AND

b. Because of ~~his~~/her condition, there is a likelihood of serious harm to ~~him~~self or others, and therefore,

IT IS ORDERED

ke through the two which do not apply)

a. That said person be committed to a state mental health facility for in-patient care and treatment as provided in Section 44-17-580, S.C. Code, 1976, as amended. and following this,

b. That said person undergo an out-patient treatment program at ORANGEBURG COUNTY mental health facility for a period not to exceed 12 months. And, furthermore, that ~~this~~ the Court shall retain jurisdiction over said person to insure compliance with this Order, pursuant to Section 44-17-580, S. C. Code, 1976, as amended.

~~That it having been requested by _____ that said person be admitted to _____ whose director has agreed thereto, the said person is ordered admitted to said hospital for care and treatment as provided for in Section 44-17-610, S. C. Code, 1976, as amended.~~

l this 21st day of June, 20 05.

Judge of Probate Court (SEAL)

TRUE COPY,

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

EXH C

CONFIDENTIAL

A-122B

7456-A-017

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

C NTY OF ORANGEBURG

E ARTE:

G. LEWIS ARGOE, JR.
(Applicant)

ORDER OF DETENTION

IN THE MATTER OF:

MARTHA L. ARGOE
(Alleged to be Mentally Ill)

Upon reading the affidavit of G. Lewis Argoe, Jr. dated
Name of Deponent

the 6th day of June, 20 05, it is **ORDERED, ADJUDGED, AND DECREED:**

Pursuant to the provisions of Section 44-17-430, S.C. Code, 1976, as amended:

That any officer of the peace take the person alleged to be mentally ill into custody for a period of not to exceed twenty-ur (24) hours, during which detention said person shall be examined by a licensed physician.

GIVEN under my Hand and Seal of the Probate Court of Orangeburg County

this 6th day of June, 20 05.

Pandora Jones-Glover
Judge of Probate

NOTE: TO OFFICER OF THE PEACE TAKING PERSON INTO CUSTODY:

". . . Provided the individual taken into custody shall have the right to representation by an attorney. If within the twenty four (24) hours the person in custody is not examined by a licensed physician, or if upon examination, the physician does not execute the certification provided for in Section 44-17-410(2), . . . the individual in custody shall be immediately released." Section 44-17-430, S.C. Code, 1976, as amended.

SCMJH FORM

COPY

FILED

2007 JUN -6 A 8:42

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

MARTHA LEWIN ARGOE

PLAINTIFF,

vs.

THREE RIVERS BEHAVIORAL CENTER AND PSYCHIATRIC SOLUTIONS, ITS SUCCESSOR; PHYLLIS BRYANT-MOBLEY, MD; GLENN HOOKER, MD; AIKEN REGIONAL MEDICAL CENTER, AURORA PAVILION; DAVID A. STEINER, MD; CHERYL C.-DODDS, MD; DORIS ANN BURRELL, RN; CAROLINA CARE PLAN; JAMES F. WALSH, JR.; G. LEWIS ARGOE, JR.; AND GEORGE L. ARGOE, III,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

DOCKET NO.: 2007-CP-32- _____

CIVIL COVER SHEET

2007-CP32-1981

Submitted by: Jan L. Warner
Address: Warner Payne & Black, LLC
Post Office Box 2628
Columbia, SC 29202

Telephone #: (803)799-0554

Fax #: (803) 799-2517

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the Defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check one box below*)

X JURY TRIAL demanded in Complaint.
ف This case is subject to **ARBITRATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
X This case is subject to **MEDIATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
ف This case is exempt from ADR (certificate attached).

NATURE OF ACTION (*Check one box below*)

Contracts
- ف Construction (100)
- ف Debt Collection (110)
- ف Employment (120)
- ف General (130)
- X Wrongful Breach (140)
- ف Other (199) _____

Torts – Professional Malpractice
- ف Dental Malpractice (200)
- X Legal Malpractice (210)
- Medical Malpractice (220)
- ف Other Malpractice (299) _____

Torts – Personal Injury
- ف Assault/Slander/Libel (300)
- X Conversion (310)
- ف Motor Vehicle Accident (320)
- ف Premises Liability (330)
- ف Products Liability (340)
- X Other (399) Fraud, Conspiracy, Intentional Infliction of Emotional Distress, Breach of Trust, etc.

Real Property
- ف Claim & Delivery (400)
- ف Condemnation (410)
- ف Foreclosure (420)
- ف Mechanic's Lien (430)
- ف Partition (4400)
- ف Possession (450)
- ف Other (499)

Inmate Petitions
- ف PCR (500)
- ف Sexual Predator (510)
- ف Mandamus (520)
- ف Habeas Corpus (530)
- ف Other (599)

Judgments/Settlements
- ف Death Settlement (700)
- ف Foreign Judgment (710)
- ف Magistrate's Judgment (720)
- ف Minor Settlement (730)
- ف Transcript Judgment (740)

Administrative Law/Relief
- ف Driver License Reinstate (800
- ف Judicial Review (810
- ف Relief (820)
- ف Permanent Injunction (830)
- ف Forfeiture (840)

Appeals
- ف Arbitration (900)
- ف Magistrate-Civil (910)
- ف Magistrate-Criminal (920)
- ف Municipal (930)
- ف Probate Court (940)

_____

Special/Complex/Other

☐ Environmental (660)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699)

☐ Lis Pendens (750)**
☐ Other (799)
_____

☐ Other (899)
_____

☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Other (999)
_____

_____ ** Check only if Summons & Complaint to follow in twenty (20) days

Submitting Party Signature: _____ **Date:** June 5, 2007

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the **South Carolina** Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et.. seq.
SCCA / 234 (3/04)

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville**, and Anderson**
** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTI-IERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial A-DR conference must be held within 300 days after the filing of the action.

3. Case are exempt from ADR only *upon the* following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Cases which are appellate in nature such as appeals or writs of certiorari;

   c. Post Conviction relief matters;

   d. Contempt of Court proceedings;

   e. Forfeiture proceedings brought by the State;

   f. Cases involving mortgage foreclosures; and

   g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be fried with the Court within ten (10) days after the A-DR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in. sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

MARTHA LEWIN ARGOE

PLAINTIFF,

vs.

THREE RIVERS BEHAVIORAL CENTER and PSYCHIATRIC SOLUTIONS, ITS SUCCESSOR; PHYLLIS BRYANT- MOBLEY, MD; GLENN HOOKER, MD; AIKEN REGIONAL MEDICAL CENTER, AURORA PAVILION; DAVID A. STEINER, MD; CHERYL C. DODDS, MD; DORIS ANN BURRELL, RN; CAROLINA CARE PLAN; JAMES F. WALSH, JR.; G. LEWIS ARGOE, JR.; and GEORGE L. ARGOE, III,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

DOCKET NO.: 2007-CP-32-_____

FILED

2007 JUN -6 A 8:

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

SUMMONS

2007-CP32-1981

TO: DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at their office, Post Office Box 2628, Columbia, South Carolina 29202, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

WARNER PAYNE & BLACK, LLP

Jan L. Warner
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone: 803-799-0554
Facsimile: 803-799-2517

Columbia, South Carolina
June 5, 2007

FILED

2007 JUN -6 A 8: 42

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	
MARTHA LEWIN ARGOE	DOCKET NO.: 2007-CP-32-_____
PLAINTIFF,	
vs.	
THREE RIVERS BEHAVIORAL CENTER and PSYCHIATRIC SOLUTIONS, ITS SUCCESSOR; PHYLLIS BRYANT- MOBLEY, MD; GLENN HOOKER, MD; AIKEN REGIONAL MEDICAL CENTER, AURORA PAVILION; DAVID A. STEINER, MD; CHERYL C. DODDS, MD; DORIS ANN BURRELL, RN; CAROLINA CARE PLAN; JAMES F. WALSH, JR.; G. LEWIS ARGOE, JR.; and GEORGE L. ARGOE, III,	**COMPLAINT (JURY TRIAL DEMANDED)**
DEFENDANTS.	2007-CP32-1981

Plaintiff, for a Complaint against Defendants, alleges:

PARTIES, JURISDICTION, and VENUE

1. Defendant Three Rivers Behavioral Center, now Psychiatric Solutions, Inc. ("Three Rivers"), is a psychiatric inpatient facility located in Lexington County, South Carolina. Defendant Cheryl C. Dodds ("Dodds") is a medical doctor and medical director of Three Rivers Behavioral Center, and at all times alleged herein was agent and servant of Three Rivers; Defendant Phyllis Brant-Mobley ("Mobley") is a medical doctor and psychiatrist who at all times alleged herein was an agent and servant of Three Rivers, and held herself out as an employee and agent of Three Rivers; Defendant Doris Ann Burrell ("Burrell") is a Registered Nurse who at all times alleged herein was an agent and servant of Three Rivers. Defendant James F. Walsh, Jr.

("Walsh") is an attorney who lives in Orangeburg, South Carolina. Defendant G. Lewis Argoe, Jr. ("Argoe, Jr.") is the husband of Plaintiff and a resident of Orangeburg County, South Carolina; Defendant George L. Argoe, III ("Argoe, III") is the son of Plaintiff and a resident of Beaufort County, South Carolina. Defendant Glenn Hooker ("Hooker") is a medical doctor who currently resides in Florence County, South Carolina. Defendant Aiken Regional Medical Center is a hospital at which Aurora Pavilion is the psychiatric unit in Aiken, South Carolina ("Aurora"). Defendant David A. Steiner ("Steiner") is a physician who at all times alleged herein was an agent and servant of Aiken Regional Medical Center and/or Aurora Pavilion. Carolina Care Plan ("Care Plan") provided health insurance coverage for Plaintiff as wife of Argoe, Jr. and does business in Lexington County. "Medical Defendants" refers collectively to all hospitals, physicians, and nurses who are named as defendants herein.

2. The majority of the acts complained of herein took place in Lexington County, South Carolina.

3. This Court has jurisdiction over the parties and the subject matter, and venue is proper in Lexington County, South Carolina

FACTUAL BACKGROUND

4. Plaintiff is a resident of Orangeburg County, South Carolina, is sixty-four (64) years of age, and has been married to Argoe, Jr. for forty-two (42) years. Plaintiff and Argoe, Jr. had one (1) child, Argoe, III.

5. Plaintiff and Argoe, Jr. have had marital problems for a number of years prior to the acts complained of herein. The martial relationship was strained to the extent that Plaintiff had moved out of the bedroom several years ago. For an extended period of time leading up to June 2005, Argoe, Jr. had been taking Plaintiff's valuable

jewelry and personal property, bank records, tax bills, automobiles, and money. Unknown to Plaintiff, Argoe, Jr. had caused the transfer of a classic Corvette automobile Plaintiff had inherited into his name and hid the same. In order to preserve and protect her properties, Plaintiff removed what was left of her valuables from the residence she and Argoe, Jr. shared and placed them in storage.

6. Concerned about the possibility of Plaintiff divorcing him, and in an effort to control Plaintiff, without her knowledge, Argoe, Jr. went to the Orangeburg Mental Health Center on or about April 20, 2005 and spoke with a counselor about involuntarily committing Plaintiff to a psychiatric facility based upon a list of his complaints about her, most of which reflected the marital strife between him and Plaintiff. In fact, the marriage was so irretrievably broken that Plaintiff had appointed her son, Argoe, III, as agent under her Durable Power of Attorney on April 20, 2004 in the place of her husband because she did not trust Argoe, Jr.. At the time, Plaintiff did not know that Argoe, Jr. had enlisted Argoe, III to assist him.

7. At this time, unknown to Plaintiff, Argoe, Jr. enlisted the aid of Argoe, III and attorney Walsh who had represented Argoe, Jr. but never had permission to represent Plaintiff. At the direction of Argoe, Jr., and acting as Plaintiff's attorney without her knowledge or consent, Walsh prepared a deed for Argoe, III to sign as Plaintiff's attorney in fact that purported to transfer Plaintiff's valuable Beaufort County condominium and boat slips into a purported Trust that was, in effect, irrevocable, and which benefited Argoe, III, not Plaintiff, leaving Plaintiff liable for the mortgage. All of this was done without Plaintiff's knowledge or consent, and without Argoe, III having authority to sign such a deed using Plaintiff's Durable Power of Attorney.

8. After this deed was recorded among the public records for Beaufort County on May 27, 2005, on or about June 6, 2005, Argoe, Jr., secured an Order of the Orangeburg County Probate Court involuntarily committing Plaintiff to a mental institution based on the allegations made on April 20, 2005. Based on this Order, on June 8, 2005, Plaintiff was apprehended and imprisoned by Orangeburg County law enforcement and, against her will, transported to the Orangeburg Mental Health Center where she saw, for the first time, Hooker for several minutes in the presence of Argoe, Jr. Hooker never examined Plaintiff, but sent her to the Orangeburg Regional Medical Center for a CT-Scan. Despite the fact that he had not examined her, and despite the fact that the CT-Scan was negative, Hooker signed an affidavit in support of Plaintiff's commitment, which did not state that Plaintiff was either mentally ill or a danger to herself or others. (**Exhibit 1, Hooker Affidavit**).

10. Based upon Hooker's affidavit and Argoe, Jr.'s allegations (**Exhibit 2, Argoe, Jr.'s Allegations**), Plaintiff was again imprisoned by Orangeburg County law enforcement and taken to Defendant Aiken Regional Medical Center (Aurora Pavilion) where she was seen by Steiner. On the way to Aiken, with Plaintiff in the vehicle, the Orangeburg police officer pulled over into a convenience store, called Argoe, Jr. on his cell phone, and waited for Argoe, Jr. so that Argoe, Jr. could be present when Plaintiff was taken to Aurora, all against Plaintiff's will.

11. At Aurora, Steiner did an initial assessment of Plaintiff, and although he did not determine that Plaintiff was a danger to herself or others as required by South Carolina law to justify involuntary commitment, Steiner still estimated that Plaintiff's hospital stay would be ten (10) days (**Exhibit 3, Steiner Assessment**).

12. While being held at Aurora against her will, Plaintiff was not only subjected a full body search, but also was forced to stay at that facility without a toothbrush, soap, deodorant, or change of clothing until she was transferred to Three Rivers because Carolina Care Plan would not cover her stay at Aurora.

13. While Plaintiff was being held against her will, Argoe, Jr. through his lawyer Walsh, filed an action in Orangeburg Probate Court on June 7, 2005 seeking the appointment of Argoe, III as Plaintiff's Guardian and Conservator so that Argoe, III could take over Plaintiff's finances and make her health decisions. No notice of these proceedings or hearings or any other actions taken by Walsh, Argoe, Jr. and Argoe, III were ever personally served upon Plaintiff or sent to her. Plaintiff had no knowledge of this or any other proceeding that affected her significant personal, property, and other interests until more than a year later.

14. Because Plaintiff's health insurance with Carolina Care Plan would not cover her stay at Aurora, Plaintiff was transported against her will by Aiken County law enforcement to Three Rivers on or about June 9, 2005. Upon arriving at Three Rivers, although there was still no determination made that Plaintiff was a danger to herself or others as required by statute (**See Exhibit 4, Three Rivers Intake Assessment**), Plaintiff was imprisoned at Three Rivers against her will for nearly six (6) weeks during which time she was assaulted and battered and her rights were trampled.

15. From June 9, 2005 until she was finally discharged on or about July 20, 2005, Plaintiff was not found to be either a danger to herself or others, yetThree Rivers forced unnecessary and inappropriate medications on Plaintiff by injection and otherwise, all against her will and without justification, and required her to remain imprisoned there. The medication forced on Plaintiff by injection and otherwise caused

her physical problems, including health issues that were visible on her EKG and other uncharacteristic readings. The medication protocol prescribed by Three Rivers, Mobley, Dobbs, and others was wrong, dangerous to Plaintiff's physical health, and unwarranted, especially given the fact that Plaintiff had been characterized as being "obstinate" because she would not admit she had a mental illness because.

16. Plaintiff was held against her will at Three Rivers based upon repetitive false statements and reports made by Mobley, Dobbs, Burrell, and other agents and servants of Three Rivers which were based on false and misleading information provided by Argoe, Jr. and Argoe, III, ultimately, Plaintiff was given a diagnosis of bipolar which is not the case.

17. Within Plaintiff's medical records, she was repetitively referred to as a "wealthy woman," but was never diagnosed as being a danger to herself or others.

18. Three Rivers, its employees and agents, caused Plaintiff's health insurance to be milked to the maximum based on false and misleading reports even though Plaintiff did not need hospitalization, much less therapy. Three Rivers, its employees and agents, even secured payment extensions from Care Plan to keep Plaintiff even longer at that facility by making false, unbased, and self-serving reports regarding her condition.

19. While at Three Rivers, Plaintiff was held against her will, was improperly and forcefully touched and medicated, and was falsely imprisoned as at no time was she a danger to herself or others. In fact, when Plaintiff asked for legal counsel, Three Rivers terminated her telephone privileges, allowing her to call only Argoe, Jr. and Argoe, III.

20. Three Rivers brought in a consulting psychologist who, on June 14, 2005, determined that because Plaintiff showed no psychosis, and because the allegations of Aroge, Jr. appeared to emanate from marital strife, independent evidence of Plaintiff's situation should be secured by Three Rivers prior to continued treatment (**Exhibit 5, Consulting Psychologist Opinion**).

21. Three Rivers totally ignored this consultation and second opinion, and its agents and servants continued to improperly assault Plaintiff with medication to hold Plaintiff against her will based upon unfounded and false allegations of Defendants Argoe, Jr. and Argoe, III, and give her a false and unbased diagnosis.

22. Despite being informed and knowing that Plaintiff was not mentally ill and was not a danger to herself or others, Three Rivers, its agents and employees, persisted on this course of deception to assist Argoe, Jr. and Argoe, III. In fact

23. Further, Argoe, Jr., Argoe, III, and Walsh caused Mobley and Burrell, both "treating" mental health professionals and agents of Three Rivers, to improperly be appointed as medical examiners in the Guardianship and Conservatorship proceedings filed in Orangeburg County Probate Court. Thus, without notice to Plaintiff ,and contrary to South Carolina law that requires non-treating medical professionals be appointed, Mobley and Burrell, acting as agents for Three Rivers, caused false and misleading reports about Plaintiff's mental health to be filed upon the public records for Orangeburg County, South Carolina.

24. Even though the statutory law of South Carolina requires that all medical examiners conduct examinations <u>after</u> the date of appointment, Mobley, acting as agent for Three Rivers, signed false affidavits stating she had examined Plaintiff <u>after</u> the date

of appointment which was not true because Mobley never saw Plaintiff after June 28, 2005.

25. Both Mobley and Burrell improperly, illegally and unnecessarily placed Plaintiff's psychiatric records, which contain false information and which are confidential and private pursuant to statutory law of this State, upon the public records of Orangeburg County, South Carolina where they remain to this day, holding Plaintiff open to scorn and public ridicule.

21. In addition, based on these false statements that were made public records, Argoe, Jr., Walsh, and Argoe, III and others have used these same false records in other proceedings in probate court, family court, and common pleas court where they have falsely asserted that Plaintiff has a mental illness, thus putting Plaintiff to more expense and causing more damage to her, all of which was foreseeable by all Defendants herein.

27. Based upon the improper and false reports of Mobley, Dodds, Burrell, Hooker, Steiner, Aiken Pavillion, Three Rivers, and others, Plaintiff was "sentenced" to remain at Three Rivers for a year or, upon release, to secure outpatient treatment which was not medically necessary. Argoe, Jr. and Argoe, III continued to provide false information and history to Three Rivers which accepted the same as true and, without investigation, continued to hold Plaintiff against her will.

28. Upon information and belief, Carolina Care Plan granted extensions of coverage and paid for this unnecessary "care" and medication when, had it sent in a qualified care manager and/or otherwise reviewed Plaintiff's records, it would have determined that Plaintiff was being improperly and illegally held by Three Rivers. Further, Carolina Care Plan should not have covered or paid for any additional stay by

Plaintiff who did not have a condition that justified the same. Upon information and belief, Three Rivers and its agents and servants falsely completed insurance documents to order to continue Plaintiff's coverage, and thereby lengthen her stay at their facility.

29. Upon information and belief, during the time Plaintiff was confined at Three Rivers against her will, Three Rivers was in financial straits, may have been in the process of being sold, and maintained Plaintiff because her stay was paid privately by insurance at greater rates than its Medicaid patients. Upon information and belief, Three Rivers was able to keep up its census by filling a private pay bed that was covered by private insurance.

30. As a condition of her release from Three Rivers, Plaintiff was required to undergo continued therapy, which was also unnecessary, with a psychiatrist in Beaufort. This psychiatrist and his nurse were intimidated by Argoe, Jr. and Argoe, III who demanded that Plaintiff continue to be medicated when she did not need medication in their continued efforts to control her.

31. When Plaintiff was not prescribed the medications that Argoe, Jr. and Argoe, III felt she needed, they, with Walsh's assistance, caused a second action for Guardianship and Conservatorship to be filed in the Orangeburg probate court, this time based upon the statement of a financial advisor, not Plaintiff's physician. This second action was also never served upon Plaintiff who did not know Argoe, III had been appointed as her conservator by an order that was also issued without notice. In this proceeding, Argoe, Jr., Walsh, and Argoe, III again improperly caused Plaintiff's treating physicians to be appointed as examiners in their continued efforts to gain access to Plaintiff's private medical records which Plaintiff had restricted and again caused the same to be disclosed and placed on the public records of this state.

32. All actions by Argoe, Jr., Walsh, and Argoe, III were accomplished maliciously and with intent to injure Plaintiff and to take over her finances and health care decisions.

33. All actions taken by all medical Defendants were based upon unsubstantiated statements of Argoe Jr., who was trying to stave off a divorce action, by Argoe, III who had secured Plaintiff's condominium and was living there for next to nothing and allowing Argoe, Jr. to use a boat slip belonging to Plaintiff without payment; and by Walsh who was trying to gain a collateral advantage in future divorce proceedings.

34. Argoe, Jr., Walsh, and Argoe, III improperly secured, and the medical Defendants improperly released Plaintiffs private medical records that, in addition to containing false diagnoses concocted by Three Rivers, have been improperly filed and disclosed by Argoe, Jr., and Argoe, III throughout the State of South Carolina. Argoe, Jr., Walsh, and Argoe, III, along with the counsel representing them, have repetitively used and disclosed these private medical records and have accused Plaintiff of being mentally ill and incompetent in pending proceedings. As a result of these acts, Plaintiff's action in the Family Court for support was put on hold and, instead of receiving support, Plaintiff has been forced to borrow money on which to live.

35. Three Rivers, Dobbs, Mobley, Burrell, Aurora, Steiner, their agents and employees did not comply with all of the mandatory requirements necessary to retain Plaintiff, including lack of appropriate physician's certification containing grounds for opinion.

36. Throughout Plaintiff's false imprisonment, she was never found to be a danger to herself or others, yet she was confined at Three Rivers for more than six weeks when the Virginia Tech shooter spent one overnight.

37. Three Rivers at all times herein held itself out to the public by offering to provide psychiatric services. The Plaintiff understood and believed all physicians and staff purportedly caring for her were hospital employees as would any reasonable person.

38. Since her release, Plaintiff has been examined by a number of independent mental health professionals, all of whom have determined Plaintiff does not suffer from mental illness.

39. By their acts, Defendants have injured and damaged Plaintiff.

FOR A FIRST CAUSE OF ACTION
(Intentional Infliction of Emotional Distress/Outrage)
(Plaintiff v. all Defendants)

40. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

41. Defendants intentionally, willfully, wantonly, and recklessly inflicted severe emotional distress upon the Plaintiff in one or more of the following particulars:

a. Defendants caused Plaintiff to be involuntarily committed and confined for 43 days without just cause even though her symptoms and alleged conduct did not rise to the level required to allow a person to be involuntarily committed and held against their will and thereafter required continuing therapy when such was not called for;

b. While she was involuntarily committed, Defendants caused Plaintiff to be confined in facilities from which she could not leave or control her movement; restricted Plaintiff's access to persons outside the facility by limiting her telephone privileges to those who conspired to put her there, and forced Plaintiff to endure a multitude injections and ingest medications that were not necessary; and

c. Plaintiff will forever be forced to bear the false label and stigma associated with being falsely diagnosed as bipolar and mentally ill despite the fact the involuntary commitment was not medically necessary and was a tool used by Argoe, Jr. to gain collateral advantage and by Argoe, III to gain access to valuable assets owned by Plaintiff.

d. Plaintiff's false diagnosis has been made public and has been used against her.

42. As the direct and proximate result of the foregoing, Plaintiff has been injured and damaged as such conduct is uncivilized, is utterly atrocious, and can not be tolerated in a civilized society. Plaintiff seeks actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)
(Plaintiff vs. Three Rivers, Mobley, Hooker, Aurora, Steiner, Dodds, Burrell, Care Plan)

43. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

44. Defendants, acting separately and concurrently, engaged in negligent, grossly negligent, reckless and willful behavior in one or more or the following particulars:

a. Although he did not examine her, Hooker signed an affidavit in support of involuntary commitment in which he did not state Plaintiff was a danger to herself or others when he knew or should have known that the allegations made by Defendant

Argoe, Jr. nearly two months earlier were indicia of marital difficulties. Based on the nature of Argoe, Jr.'s allegations, Hooker knew or should have known the same did not rise to the level necessary to justify a medical determination of involuntary commitment. Despite the foregoing, Hooker signed an affidavit that set into motion a vicious chain of events that caused Plaintiff to be involuntarily committed and suffer continuing questions about her capacity that are still being used for collateral advantage by Defendants Argoe, Jr. Argoe, III, and Walsh;

b. Steiner, acting as an agent for Aiken and Aurora, despite not reaching the conclusion that Plaintiff was a danger to herself or others, concluded that Plaintiff's would require 10 days of hospitalization, thus continuing Plaintiff's involuntary detention at Aurora where she was forced to endure a full body search while not being provided with toiletries or fresh clothing. Defendant Steiner knew or should have known that the alleged conduct described by Argoe, Jr., which he did not personally observe during his examination of Plaintiff, did not rise to the level required to justify a medical determination that commitment of Plaintiff was necessary or justified. Additionally, Steiner took no steps to corroborate or investigate Plaintiff's repeated assertions that Defendant Argoe, Jr. had been abusive toward her and had initiated the entire involuntary commitment process out of malice and for the purpose of gaining a collateral advantage in an action for divorce he feared Plaintiff may bring;

c. Defendants Three Rivers Mobley, Dobbs, Burrell, and other agents and servants of Three Rivers, continued the unjustified and unnecessary detention of Plaintiff. As with Hooker and Steiner, no medical professional at Three Rivers diagnosed Plaintiff as being a danger to herself or others. While in the care and control of Three Rivers, Plaintiff was medicated without consent through the use of forced

injections; was cut off from contact with anyone other than the family members who had given false information about Plaintiff; and was otherwise treated as a mentally ill person even though no specific mental illness or psychosis was identified;

d. While in the control of Mobley, Dobbs, Burrell, and other agents and servants of Three Rivers, Plaintiff's repeated denials of mental illness were met with more medications and were ignored by Three Rivers which failed to investigate the allegations despite being placed on notice to do so by a consulting psychologist who properly identified the matter arising from marital problems;

e. Burrell and Mobley submitted affidavits to the Probate Court (Mobley's was false) recommending that Plaintiff's involuntary commitment be continued, without independent investigation of the allegations. Based on these affidavits, the Probate Court ordered the continued detention of Plaintiff; and

f. Care Plan, despite owing a duty to Plaintiff to ensure that all treatment paid for by them was necessary and appropriate, failed to adequately review and monitor the treatment plan put in place by Three Rivers and approved unnecessary and unwarranted treatment for Plaintiff which resulted in Plaintiff's prolonged imprisonment and confinement, forced medication, and battery.

45. Although Defendants allowed the involuntarily commitment of Plaintiff to continue, and deprived her of her liberty and privacy, even though she did not pose a danger to herself or to others, was not disabled, and was able to care for herself and provide for herself.

46. As a direct and proximate result of the Defendants' negligence, gross negligence, willfulness and recklessness, Plaintiff has been damaged and is entitled to actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment)
(Plaintiff vs. All Defendants)

47. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

48. The conduct of all Defendants, combining and concurring, caused Plaintiff to be restrained and confined without her consent and with the intent that she be imprisoned.

49. Even based upon the false and unbased affidavits and medical records prepared by or on behalf of Defendants, Plaintiff's alleged conduct and purported symptoms did not rise to the level necessary to justify involuntarily restraining her personal liberty and freedom.

50. As a result of the foregoing actions, Plaintiff was held and restrained by Defendants without just and legal cause for 43 days between June 8 and July 20, 2005, and thereafter.

51. Defendants' willful and intentional restraint of Plaintiff was the direct and proximate cause of the injury and damages suffered by the Plaintiff, and she is entitled to acutal and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Assault and Battery)
(Plaintiff vs. Defendants Three Rivers, Burrell, Dodds, and Mobley)

52. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

53. Throughout her illegal detention at Three Rivers, Plaintiff was forcefully medicated through injections and required to take unnecessary medications orally that made her sick, even though the Plaintiff's purported symptoms and behavior provided

as part of her history by Argoe, Jr. were not independently verified, and did not provide sufficient justification for the forced medical treatment.

54. The aforementioned was done without the consent and against Plaintiff's will.

55. All of the willful, intentional, wanton and reckless assaults and batteries against Plaintiff were the direct and proximate cause of the permanent injuries and damages suffered by the Plaintiff for which she seeks actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)
(Plaintiff vs. Defendant Argoe, III)

56. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

57. Defendant Argoe, III, acting as Plaintiff's fiduciary and attorney in fact under her April 20, 2004 Power of Attorney, signed a deed on behalf of Plaintiff, without her knowledge or consent, which transferred her valuable Beaufort County property into a trust that was, in effect, irrevocable and benefited Argoe, III, not Plaintiff.

58. This self-dealing transaction by Plaintiff's attorney in fact is a breach of fiduciary duty because same was not authorized by the terms of her Power of Attorney.

59. Such conduct constitutes a direct and proximate cause of breach of fiduciary duties, and Plaintiff is entitled to recover actual and punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Legal Malpractice)
(Plaintiff vs. Defendant Walsh)

60. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

61. Although without Plaintiff knowledge or consent, Walsh undertook to represent Plaintiff, through her attorney in fact, Argoe, III, who was acting under

Plaintiff's April 20, 2004 Power of Attorney, by preparing a deed that purportedly transferred Plaintiff's valuable Beaufort County property into a purported trust that was, in effect, irrevocable and benefited Argoe, III, not Plaintiff.

62. Although Plaintiff was not aware of this transaction, Walsh, by representing Plaintiff's attorney in fact, was in fact engaged to represent Plaintiff's interests, not the personal interests of Argoe, III.

63. Walsh later represented Argoe, Jr. and Argoe, III in actions against Plaintiff's interest and in so doing, violated his professional responsibility by representing a party adverse to Plaintiff without first obtaining Plaintiff's informed consent to the representation.

64. Because Walsh had formerly represented Plaintiff in a related matter, he was not allowed to represent Argoe, Jr. and Argoe, III in a substantially related matter in which Plaintiff's interests were materially adverse to those of Argoe, Jr. and Argoe, III.

65. In that Walsh undertook to represent Plaintif, albeit without her consent or knowledge, he was prevented from representing Argoe, Jr. or Argoe, III, but still represented them in proceedings concerning Plaintiff's capacity to care for her own interests.

66. The information gained by Walsh from Argoe, III during his representation of Plaintiff via Argoe, III acting as her attorney in fact is substantially related to the information sought by Argoe, Jr. and Aroge, III in subsequent proceedings.

67. Plaintiff never provided Walsh informed consent in writing to permit his subsequent representation of Argoe, Jr. and Argoe, III in the matters in Probate Court.

68. As a direct and proximate cause of such actions, Plaintiff was injured and damaged and is entitled to recover actual and punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(Negligence)
(Plaintiff vs. Three Rivers, Dodds, Mobley and Care Plan)

69. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

70. Defendants engaged in acts of negligence, gross negligence, recklessness, and wantonness in one or more of the following particulars:

a. Three Rivers, by and through its agents and employees, eitherdid not have an established policy or procedure that would lead to the discovery of false information being provided by Argoe, Jr. and Argoe, III, or , if it did, it did not investigate same even after obtaining a second opinion to do so;

b. Care Plan, despite having made periodic inquiries into the status of Plaintiff's treatment, did not request or review actual documents, charts, or affidavits which served as the basis of Plaintiff's involuntary commitment and continuing detention. Instead Care Plan relied upon verbal descriptions of Plaintiff's symptoms and verbal accounts of her purported behavior which were inaccurate and, in fact, quite misleading. Had Care Plan requested and reviewed the written documentation prepared in connection with Plaintiff's involuntary commitment and illegal detention, Care Plan would have determined that the conduct and symptoms described by Argoe, Jr. and Argoe, III were evidence of marital strife and efforts to control Plaintiff, were false, and even if true, did not justify the level or intensity of treatment forced upon Plaintiff. As a result, Care Plan would have denied Three Rivers access to Plaintiff's insurance benefits which, in turn, would have preserved Plaintiff's benefit that was otherwise

depleted and would have ended Three Rivers incentive for forcing the unwarranted detention of Plaintiff.

c. Three Rivers breached its duty to supervise and monitor its agents so as to secure a proper diagnosis and provide discharge based upon an objective and independent examination of Plaintiff.

d. By failing to properly supervise the actions of its agents and employees, Three Rivers failed to recognize the true motivation behind Argoe, Jr. and Argoe, III's "history" which Three Rivers neither independently corroborated, nor verified through independent sources despite Plaintiff's repeated and constant warnings and requests, and despite a second opinion secured by Three Rivers that Plaintiff may be correct, and that "history" should be verified through independent sources.

e Three Rivers failed to train supervisors to recognize, investigate, and properly remedy this type of situation and allowed Plaintiff to be falsely imprisoned based solely on uncorroborated "history" asserted by her spouse whose motive was to save himself money in a divorce case and whose son had converted Plaintiff's valuable property to his own use and benefit.

f. Care Plan had an affirmative duty to prevent actions of the type to endured by Plaintiff was being subjected and failed to adequately review Plaintiff's actual mental health, instead choosing to blindly follow the false statements from Three Rivers as generated by Argoe, Jr. and Argoe, III, and regenerated in the medical records.

71. As the direct and proximate result of the foregoing acts and omissions, Plaintiff has been injured and damaged, and is entitled to actual and punitive damages.

FOR A EIGHT CAUSE OF ACTION
(Breach of Duty of Confidentiality and Negligence Per se for violation of S.C. Code Ann. Regs. 81-60(D))
(Plaintiff vs. Dodds and Mobley)

72. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

73. Defendants Dodds and Mobley were treating physicians for Plaintiff at Three Rivers, a licensed health care facility, both of which are bound by duties of confidentiality pursuant to § 19-11-95, § 44-115-10-150, § 40-47-200, and § 80-60(d) S.C. Code Ann Req. Despite Plaintiff having been under their care and treatment since June 9, 2005, Dodds and Mobley not only allowed themselves to be appointed examiners in the Conservatorship action on July 8, 2005, but also did not object thereto.

74. State law requires that examiners for Conservatorship actions be neutral and independent physicians, not treating physicians.

75. By not objecting to their appointments, Dodds and Mobley allowed Plaintiff's private medical diagnoses and their opinions, albeit false, to be published and released into the hands of Argoe, Jr., Argoe, III, Walsh, and the public in general of this state and the world in direct contravention of federal and state law.

76. Argoe, Jr., Argoe, III and Walsh have subsequently released and publicized this confidential and private medical information, albeit false, which has been improperly released in various public legal proceedings throughout the state in efforts to have Plaintiff declared incompetent and to have Guardians and Conservators appointed to represent Plaintiff, despite her being fully capable of representing her own interests.

77. S.C. Code Ann. Regs. 81-60(D) requires physicians to maintain patients' confidences within the constraints or limitations of the law.

78. Plaintiff is one of the class of people intended to be protected by said statutes.

79. By improperly serving as examiners in the Probate Court and by allowing Plaintiff's confidential and private medical information to be released into the possession of Argoe, Jr., Argoe, III, Walsh, Dodds, Mobley and the world, breached Plaintiff's confidence and violated S.C. Code Ann. Regs. 81-60(D), along with other state and federal law. As such, Defendants are liable to the Plaintiff as being negligent per se.

80. As a direct and approximate result, Plaintiff is entitled to recover her actual and punitive damages.

FOR A NINTH CAUSE OF ACTION
(Negligence Per se for violation of the Health Insurance and Portability Accountability Act of 1996, 42 U.S.C. 1320d *et seq.* ("HIPAA"))
(Plaintiff vs. Three Rivers, Dodds and Mobley)

81. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

82. HIPAA, which applies to health care providers, prohibits the unauthorized release of a person's private health information.

83. Health information includes any information, whether oral or recorded in any form or medium, that: (1) is created or received by a health care provider ...; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual.

84. Defendants Dodds and Mobley were Plaintiff's treating physicians at Three Rivers. Despite Plaintiff being under their care and treatment since June 9, 2005, Dodds and Mobley allowed themselves to be appointed examiners in the Probate action on

July 8, 2005, even though state law requires that examiners for Guardianship and Conservatorship actions be neutral and independent physicians, not treating physicians.

85. By not objecting to their appointments, Dodds and Mobley allowed private and confidential medical diagnosis and opinions, albeit false, to be released into the hands of Argoe, Jr., Argoe, III, Walsh, and the world in general.

86. Argoe, Jr., Argoe, III and Walsh have subsequently released and publicized this confidential and private medical information, albeit false, which was improperly released by these Defendants in various public legal proceedings throughout the state in efforts to have Plaintiff declared incompetent and to have Guardians and Conservators appointed to represent Plaintiff, despite Plaintiff being fully capable of representing her own interest.

87. Plaintiff is one of the class of people intended to be protected by said statutes.

88. By improperly serving as examiners in the Probate Court and by allowing Plaintiff's confidential and private medical information, albeit false, to be released into the possession of Argoe, Jr., Argoe, III, Walsh, and the world, Dodds, Mobley and Three Rivers breached Plaintiff's confidence and violated HIPAA. Defendants are liable to the Plaintiff in negligence per se.

89. As a direct and proximate result thereof, Plaintiff was injured and is entitled to recover her actual and punitive damages.

FOR AN TENTH CAUSE OF ACTION
(South Carolina Unfair Trade Practices Act)
(Plaintiff vs. Defendant Three Rivers)

90. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

91. The South Carolina Unfair Trade Practices Act, *S.C. Code Ann.* §§ 39-5-10 to 39-5-350 was created to prevent unfair or deceptive acts in the conduct of trade or commerce.

92. Three Rivers, its agents, and employees engaged in unfair and deceptive acts by taking advantage of Plaintiff's dilemma and insurance coverage; by restraining and forcefully medicating Plaintiff despite the fact that Plaintiff was not mentally ill or a danger to herself or others, and was capable of caring for herself; and by submitting bills and receiving payment for these services based on unobserved, unverified, and uncorroborated conduct and symptoms initially related to agents of Three Rivers by Argoe, Jr. and Argoe, III all for the purpose of assuring that Plaintiff was held and treated for the maximum time possible under Plaintiff's private insurance plan with Care Plan.

93. All acts of Defendant Three Rivers and its agents hereunder have an impact upon the public interest as unnecessary and unwarranted medical treatment and reimbursement contribute to the rising cost of health care and health insurance coverage.

94. Three Rivers' operational plan to obtain maximum compensation for treatment regardless of the necessity for treatment was deceptive and fraudulent and, as such, engaged in Unfair Trade Practices.

95. Plaintiff is entitled to treble damages and attorney's fees.

FOR A ELEVENTH CAUSE OF ACTION
(Conspiracy)
(Plaintiff v. all Defendants)

96. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

97. All Defendants combined and agreed to ignore Plaintiff's and others warnings that they had been provided false information by Argoe, Jr. in order to hold and keep Plaintiff for an extended period in their facility and to secure reimbursement for unwarranted medical treatment from Care Plan and from Plaintiff to whom they referred to in her medical records on several occasions as being a wealthy woman or woman of means.

98. The conspiratorial agreement among all Defendants was designed to unjustly enrich Three Rivers which is believed to have been in financial straights during the time of Plaintiff's hospitalization and has since been acquired by Psychiatric Solutions, and to stigmatize Plaintiff.

99. The acts of Defendant's, combining, and concurring cause Plaintiff special damages.

100. Plaintiff is entitled to recover her actual and punitive damages.

FOR A THIRTEENTH CAUSE OF ACTION
(Abuse of Process)
(Plaintiff vs. Defendants Hooker, Aurora, Steiner, Three Rivers, Mobley, Dodds, Burrell, Argoe, Jr., Walsh and Argoe, III)

101. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

102. On or about June 6, 2005, Argoe, Jr. secured an Order from the Orangeburg Probate Court involuntarily committing Plaintiff to a mental institution. Argoe, Jr. did so with the ulterior motives of gaining a collateral advantage in future family court actions he feared Plaintiff may initiate to seek divorce and equitable division and also providing Argoe, III with a record on which he could serve as a basis for his petition to become Plaintiff's Guardian and Conservator so as to totally control her.

103. Hooker, without examining Plaintiff and based on Argoe, Jr.'s stale account of Plaintiff's purported symptoms and alleged behavior that did not rise to the proper level, signed an affidavit to be submitted to the Probate Court in order to justify the Probate Court's issuance of an Order requiring the involuntary detention and examination of Plaintiff.

104. Although Plaintiff did not pose a threat to her own life or the life of others, Hooker completed the affidavit in order to assist Argoe, Jr. because of the "problems [Plaintiff] is causing family."

105. On or about June 6, 2005, Argoe, Jr., with the advice and assistance of Walsh and Argoe, III, filed a Petition in Orangeburg Probate Court seeking appointment of Argoe, III as Plaintiff's Conservator, not for the purpose of protecting and conserving Plaintiff's assets, but for the ulterior purpose of gaining control of the assets to convert the same to his own use and benefit, both present and future.

106. While acting as an agent of Aurora, Steiner examined Plaintiff and elected to involuntarily detain Plaintiff for treatment although Plaintiff did not exhibit any symptoms of mental illness sufficient to justify the extreme measure of involuntary commitment.

107. As a result of Steiner's decision, Plaintiff was ultimately transported to Three Rivers where she was examined and her involuntary detention continued.

108. Subsequent to the involuntary commitment and petition for appointment as Guardian and Conservator, and prior to Plaintiff's release from Three Rivers, Mobley, Dodds, and Burrell, while acting as servants and agents of Three Rivers, filed affidavits with the probate court wherein they attested that continued involuntary inpatient treatment was medically necessary to ensure the health and safety of Plaintiff. These

Defendants did so, not out of concern for Plaintiff's safety, but for the ulterior motive of maintaining Plaintiff as a patient in order to secure maximum compensation for the maximum period of time from Plaintiff's insurance provider.

109. Further, Argoe, Jr., Argoe, III, and Walsh caused Mobley and Burrell to be improperly appointed as examiners in the Guardianship and Conservatorship proceedings in that both were engaged in the process of treating Plaintiff prior to being appointed as examiners, which is contrary to South Carolina statutory law.

110. All Defendants aided and assisted each other in carrying out these processes for the sole purposes of gaining collateral advantages in other proceedings and thereby abused the process by using the same for other than intended uses.

111. Based on the forgoing, Defendants an abuse of the legal process by causing, continuing, and supporting Plaintiff's unwarranted detention for motives other than protecting the life of Plaintiff or the life of others for their own benefits.

112. Plaintiff has been inured and damaged and is entitled to actual and punitive damages.

FOR A FOURTEENTH CAUSE OF ACTION
(Defamation)
(Plaintiff vs. All Defendants)

113. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

114. The statements and reports made by Defendants Mobley, Dobbs, and Burrell while acting as agent for and on behalf of Three Rivers, about and regarding Plaintiff filed and improperly disclosed medical records are false and defamatory, as they accuse Plaintiff of suffering from a bipolar mental illness. Argoe, Jr., Argoe, III, and Walsh, knowing, knowing re the same to be false, caused publication thereof

repetitively.

115. These false and defamatory statements made and disclosed by Defendants about Plaintiff have now been published to the court systems in South Carolina by them and Argoe, Jr. and Argoe, III, are matters of public record, and have been published to judges and attorneys in the court system of this state and to others.

116. Mobley, Burrell, Mobley, Three Rivers, Argoe, Jr., Argoe, III and Walsh intentionally, recklessly and maliciously caused these statements to be published to third parties, particularly to judges and a court system in which Plaintiff is now involved in litigation, all in an attempt to prejudice Plaintiff in her pending action.

117. As a direct and proximate result of the communication and repetition of these defamatory statements, Plaintiff has suffered injuries and damages, and is entitled to actual and punitive damages, along with special damages which include increases in Plaintiff's attorney's fees and her distress at being falsely "diagnosed" as bipolar.

FOR A FIFTEENTH CAUSE OF ACTION

INVASION OF PRIVACY

(Plaintiff v. All Defendants)

118. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

119. Defendants have invaded Plaintiff's privacy by seeking and disclosing her confidential medical records and diagnoses without the use of any medical release signed by Plaintiff and without the consent of Plaintiff.

120. Defendants, by discussing and disclosing these private and intimate medical records of Plaintiff which are false, invaded Plaintiff's privacy, and subjected her to public ridicule.

121. Defendants invaded Plaintiff's right to privacy by publishing her medical records with the Probate Court, Family Court and Court of Common Pleas as matter of public record and by discussing the same with third parties.

122. Defendant further invaded Plaintiff's privacy by giving Plaintiff's medical records and other private information belonging to Plaintiff to various attorneys who were not entitled to said information, in order to adversely impact Plaintiff's interests in pending litigation.

123. The acts of Defendants, jointly and severally, have caused Plaintiff mental suffering, distress, and humiliation, and have adversely affected her interests in her pending litigation and, she is entitled to actual and punitive damages.

FOR A SIXTEENTH CAUSE OF ACTION
PUBLIC DISCLOSURE OF PRIVATE FACT
(Plaintiff v. All Defendants)

124. Plaintiff incorporates by reference the above allegations as if set forth herein verbatim.

125. Defendants herein have engaged in a concerted effort to disseminate Plaintiff's private and confidential information, which is false, in a widespread and public manner which has no legitimate public concern and which is offensive to a reasonable person given the trust under the law which encourages patients to place their full trust in their health care providers without fear of misuse of said private information for personal gain or satisfaction, and to reward friends.

126. Plaintiff has been injured and damaged as outlined hereinabove and is entitled to actual and punitive damages against all Defendants.

WHEREFORE, Plaintiff prays for judgment on each cause of action against the Defendants as indicated for actual and punitive damages, together with such other relief as the Court may deem fit proper and equitable.

WARNER, PAYNE, & BLACK, L.L.P.

Jan L. Warner
Post Office Box 2628 (29202)
1122 Lady Street, Ste 1200
Columbia, South Carolina 29201
Telephone: (803) 799-0554
Facsimile: (803) 799-2517
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
June 5, 2007

FILED

STATE OF SOUTH CAROLINA

VERIFICATION

2007 JUN -6 A 8:42

COUNTY OF LEXINGTON

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

PERSONALLY APPEARED BEFORE ME the undersigned who, being duly sworn says that the content of the attached documents are true and correct based upon the knowledge of the undersigned, and those matters which are alleged to be based on information and belief are verily believed to be true and deponent has authorized her attorney to file and serve the same.

Martha L. Argoe

Martha L. Argoe

2007-CP32-1981

Sworn to before me this 5th day of June 2007

Notary Public for South Carolina
My Commission Expires: 11/09/08

PART II
CERTIFICATE OF LICENSED PHYSICIAN
EXAMINATION FOR EMERGENCY ADMISSION

Martha Argoe — NAME OF PERSON EXAMINED
62 — AGE
Orb — COUNTY OF RESIDENCE

D AMHC — PLACE OF EXAMINATION
3:00pm 6/8/05 — HOUR AND DATE OF EXAMINATION

I, THE UNDERSIGNED LICENSED PHYSICIAN, have examined the above-named person and am of the opinion that the said individual:

☐ IS MENTALLY ILL AND because of this mental condition CURRENTLY POSES A SUBSTANTIAL RISK of physical harm to self and/or others to the extent that INVOLUNTARY EMERGENCY HOSPITALIZATION is recommended.

My recommendation for INVOLUNTARY EMERGENCY HOSPITALIZATION is based on the following symptoms and specific examples of behavior which indicate mental illness and probable risk of harm:

Pt behavior has become problematic over last year by testimony of husband of 40 years. Pt has been spending a great deal of money, being excessive & accessatory, going out late at night by herself, dressing her poorly, taking no precautions. Seems to be having psych sx. At any rate putting herself at risk of harm & unwilling with her shown no insight or awareness of the risks & the problem she is causing family

The person is therefore to be transported to _____ NAME OF SCDMH PSYCHIATRIC HOSPITAL
or, to Anson Pavilion NAME OF NON-SCDMH HOSPITAL for involuntary emergency admission.

For admission to SCDMH hospital, Physician must complete Part II, Page 2, over.

G. Hooker MD, M.D. — SIGNATURE OF LICENSED PHYSICIAN
16367 — S.C. LICENSE NUMBER

G-Hooker MD, M.D. — TYPED OR PRINTED NAME
PHONE NUMBER

ADDRESS

All information MUST be typed or clearly printed.

SCDMH FORM
APR. 89 (REV SEPT. 93) M-131 Section 44-17-410(2)
MH-FCL-2

PART I

PAGE 1

I

APPLICATION FOR INVOLUNTARY EMERGENCY HOSPITALIZATION FOR MENTAL ILLNESS

FOR HOSPITAL USE ONLY	
Date Admitted 6-9-05	
Hospital Register No. 1018795	
Approval of Hospital Official	
Signature	Date 6/10/05

(Complete in Triplicate)
STATE OF SOUTH CAROLINA)
COUNTY OF Orangeburg)

IN THE MATTER OF:

Person alleged to be mentally ill	Sex	Birthdate	Age	Race	Marital Status
Martha L. Argoe	F		62	W	Married

Street Address	City	State	Zip	Phone #	Length of Time Residing There
1155 Putter Path	Orangeburg	S.C.	29115	(803) 568-2111	Since 1983

TO THE HOSPITAL DIRECTOR:

Application is hereby made for the INVOLUNTARY EMERGENCY ADMISSION of the above-named person to a SCDMH Psychiatric Hospital

or to _____
NAME OF NON-SCDMH HOSPITAL

for the following reasons:

That the undersigned believes that the above-named person is mentally ill, and because of this mental condition is likely to cause serious harm to self or others if not immediately hospitalized.

1. The specific type of serious harm thought probable is: ** Martha carries a handgun on her left hip all the time. Martha is a danger to herself and others. She is suspicious of others and as a result has moved silverware and other items out of the house. She refuses to touch or clean anything in the house. She locks herself in the room at night. She is fidgety and drives late at night
2. That the applicant bases his/her belief on the following grounds: Martha is fearful of people, she is paranoid. She stated that her house is bugged. She has hallucinations of seeing witches and warlocks. She spends monies excessibly, she accuses her husband of having an affair and of having another family. Clothes are stacked everywhere.
3. That the applicant understands that for Involuntary Emergency Admission to occur that the said person must be examined and certified by at least one licensed physician (Part II, Certificate of Licensed Physician for Mental Illness) as required by Section 44-17-410, S.C. Code, 1976, as amended. If the said person has not been examined, listed below are the reasons: Martha refuses treatment.
4. That next-of-kin of allegedly mental ill person is G. Lewis Argoe
Name
Relation Husband Whose address is 1155 Putter Path, Orangeburg, SC 29115 803-568-2111
RFD or Street City and State Zip Phone Number
In case of next-of-kin cannot be contacted, notify George Argoe
Relation Son Address 7 Glen Court, Greer, SC 29650 City and State Zip (864) 901-4600 Phone Number

SWORN to before me this 6th day of June, 2005
Nancy H Jacobs
Notary Public for South Carolina or Probate Judge
My Commission Expires: 07/07/2008

WHEREFORE, the undersigned requests that the person named above be admitted to a psychiatric hospital for treatment as authorized by law.

x G. Lewis Argoe
Applicant's Signature
G. Lewis Argoe Jr.
Name of Applicant (typed or printed)
1155 Putter Path Orangeburg, S.C.
Address of Applicant
Business 803-568-2111 Cell- 803-575-485
Telephone Number of Applicant
Spouse
Relation to Patient or Title, if any

(See reverse side which must be completed)

SCDMH FORM
APR 89 (REV. DEC. 99) M-130 pp. 1 of 2 (CG 12/99)

APPLICATION FOR INVOLUNTARY EMERGENCY HOSPITALIZATION FOR MENTAL ILLNESS

IMPORTANT NOTICE: All patients receiving treatment in a State Department of Mental Health facility will be charged the established fee as approved by the South Carolina Mental Health Commission.

PERTINENT FINANCIAL RESPONSIBILITY INFORMATION

Present Name	Full Name at Birth if Different From Present
Martha Argoe	Martha Lewin

Education Level	Social Security Number	Occupation	Monthly Income
14		Housewife	

Employer's Name	Address	If not employed, source of income: Retirement $	Public Assistance $	Other $
N/A				

HOSPITALIZATION INSURANCE Coverage including group insurance, Medicare, Medicaid, military medical care, etc.

Policy No. or HIR	Name of Insurance Co.	Address	If group insurance, name & address of firm
	Carolina Care Plan	Columbia	VQG
			1-800-877-6003

MILITARY SERVICE

Branch	Service Number	Dates of Service	Type Discharge	Monthly Pension	VA Claim No.
N/A					

FINANCIAL REPRESENTATIVE Please list the name, address and telephone numbers of the person to receive financial statements and other media related to the personal financial affairs on behalf of the patient

Last Name	First Name	Middle Initial	Relation to Patient	Street Address or Rural Route & Box	Telephone
Argoe,	Martha		Self	1155 Putter Path	(803) 568-2111
				City, State, Zip: Orangeburg, SC 29115	Telephone

LIST OF SCDMH PSYCHIATRIC HOSPITALS

G. Werber Bryan Psychiatric Hospital 220 Falson Drive Columbia, S.C. 29203 For information and prior to all admissions call: (803) 935-7143 - All Hours	South Carolina State Hospital 2100 Bull Street (P.O. Box 119) Columbia, S.C. 29202 For information and prior to all admissions call: (803) 898-2038 - All Hours	William S. Hall Psychiatric Institute 1800 Colonial Drive (P.O. Box 202) Columbia, S.C. 29202
Patrick B. Harris Psychiatric Hospital P.O. Box 2007 Anderson, S.C. 29622 For information and prior to all admissions call: (864) 231-2600 - All Hours	ICF / MR 7901 Farrow Road Columbia, S.C. 29203 For information and prior to all admissions call: (803) 935-6334 or (803) 898-2038 - All Hours	Psychiatry Unit Forensic Unit Children's Unit For information and prior to all admissions call: (803) 898-1662 - All Hours

NOTE: ADMINISTRATIVE PROCEDURE - FORMS:
"Application for Emergency Admission, Part I", and "Certificate of Licensed Physician, Part II", must be completed in triplicate and accompany the patient to the receiving hospital. The hospital must forward one copy to Judge of Probate of the county in accordance with 44-17-410(3) and retain one copy in the person's hospital record. ADMISSION MUST BE WITHIN SEVENTY-TWO HOURS OF THE DATE OF THE CERTIFICATION OF THE LICENSED PHYSICIAN, (PART II).

NOTE: TO LICENSED PHYSICIAN:
1. The licensed physician must consult with the local State Community Mental Health Center regarding the commitment/admission process and the available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility. (Section 44-17-460, S.C. Code, 1976, as amended).
2. The licensed physician must also consult via telephone with the admitting physician of the receiving hospital regarding the appropriateness of admission and the persons mental and physical treatment needs.

NOTE: TO POLICE AND OTHER OFFICERS OF THE PEACE:
The certificate of a licensed physician authorizes and requires taking the proposed patient into custody. Section 44-17-440, South Carolina Code of Laws, 1976, as amended: "The certificate required by item 2 of Section 44-17-410 shall authorize and require any officer of the peace, preferably in civilian clothes, to take the individual into custody and transport him to the hospital designated by the certification. No person shall be taken into custody after the expiration of three days from the date of the certification. Any friend or relative may transport the individual to the mental health facility designated in the application, provided such friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility as an officer of the peace to provide timely transportation for the patient and that the friend or relative freely chooses to assume such responsibility. A friend or relative who chooses to transport the patient shall not be entitled to reimbursement from the State for the cost of such transportation. Any officer acting in accordance with the provisions of this article shall be immune from civil liability."

NOTE: TO FRIENDS AND RELATIVES:
It is the responsibility of an officer of the peace to provide timely transportation of the person alleged to be mentally ill to the designated mental health facility. However, by freely signing this statement, you can choose to assume that responsibility. Transportation must begin immediately. This form must be hand delivered by you to the admissions office of the designated mental health facility at the time of admission.

Date

Signature of Friend or Relative/Relationship

SCDMH FORM
APR. 89 (REV. DEC. 99) M-13D pg. 2 of 2 (CG 12/99)
MH-FCC-2

Aiken Regional Medical Cen[illegible]
Aurora Pavilion Behavioral Health Services

Physician Certification and Re-Certification

Initial Certification

Date Due _____

I certify that the inpatient psychiatric hospital admission was medically necessary for either: [✓] psychiatric and/or [ ] substance abuse treatment, which could reasonably be expected to improve the patient's condition. OR

_____ diagnostic study.

I estimate 10 days _____ weeks of hospitalization is necessary for proper treatment of the patient. My plans for post hospital care for this patient:

✓ return home

_____ return to nursing home

_____ nursing home placement

_____ follow up with PCP

_____ return to assisted living/NH

_____ follow up with outpatient MH

_____ Other _____

Attending Physician

6/9/05
Date

First Re-Certification
Day 12

Date Due _____

I certify that the inpatient psychiatric hospital services furnished since the previous certification were, and continue to be, medically necessary for, either treatment which could reasonably be expected to improve the patient's condition or diagnostic study and that the hospital records indicate that the services furnished were either intensive treatment services, admission and related services necessary for the diagnostic study, or equivalent services.

I estimate an additional _____ days _____ weeks of hospitalization is necessary for proper treatment of the patient. My plans for post hospital care for this patient:

_____ return home

_____ return to nursing home

_____ nursing home placement

_____ follow up with PCP

_____ return to assisted living/NH

_____ follow up with outpatient MH

_____ Other _____

Attending Physician

___/___/___
Date

Physician Certification and Re-Certification

ADDRESSOGRAPH

101484616

ARGOF MARTHA L.
DOB: 62 SX: F PSY
MRN: 228094 ADM/REG DT: 06/08/05
AIKEN REGIONAL MEDICAL CENTER

INITIAL EVALUATION OF RISK TO SELF / OTHERS

ARGOE MARTHA L
062 W F P
Adm date: 2005-06-09
MOBLEY PHYLLIS
Act#: 1018795

SS#:
MR#:000024396
DOB:

PATIENT IDENTIFICATION

(Please check all that apply)

Informant was: ☑ Patient ☐ Family ☐ Friends ☐ Hospital Health Professional ☐ Other Health Professional ☐ Other _____

SECTION I - CURRENT RISK TO SELF / OTHERS:

Does patient or do other report:

The patient having suicidal ideation or making suicidal threats?	☐ Yes	☑ No
The patient having homicidal ideation or making homicidal threats?	☐ Yes	☑ No

If the answers to the above questions are NO, then go to Section II;
Otherwise, answer the following questions:

Is the ideation repetitive or persistent?	☐ Yes	☐ No
Does the patient have a specific plan?	☐ Yes	☐ No
Does the ideation involve serious / lethal intent?	☐ Yes	☐ No
Does the ideation have delusional or hallucinatory content?	☐ Yes	☐ No

If the answer to any of the above questions is YES, then describe the basis for such answer below.
Comments: (Describe the patient's plan, ideation, hallucination, etc.)

SECTION II - HISTORY OF SUICIDAL / HOMICIDAL IDEATION / BEHAVIORS:

Is there a history of suicidal / self-injuring ideation / behavior?	☐ Yes	☑ No
Is there a history of homicidal / assaultive ideation / behavior?	☐ Yes	☑ No
Is there a serious physical harm to self / others while in an intensive treatment setting?	☐ Yes	☑ No

If the answers to any of the above questions are NO, then go to Section III.

If the answer to any of the above questions is YES, then describe this history of suicidal / homicidal / assaultive - ideation / behavior.

SECTION III - ACCURACY OF REPORTS AND HISTORY OF RISK

Is there any evidence or concern that the patient or others may be concealing or denying current or past suicide / homicide / assaultive - ideation / behavior?	☐ Yes	☑ No

If the answer is YES, describe the evidence and/or concerns below:
No current or past suicidal ideation or gesture

This guideline is not intended to preclude any additional assessment tool, nor is it a substitute for clinical judgement.

ARGOE MARTHA L
062 W F P
Adm date: 2005-06-09
MOBLEY PHYLLIS
Act#: 1018795

SS#
MR#:000024396
DOB

INITIAL EVALUATION OF RISK TO SELF / OTHERS

PATIENT IDENTIFICATION

SECTION IV - SUICIDE & HOMICIDE / VIOLENCE RISK FACTORS ADDITIONAL TO SECTIONS I-III:

The following risk factors are not completely exhaustive. Check all that apply:

Suicide Risk Factors:

- ☐ 19 years or younger or 45 and older
- ☐ Single, widowed, divorced, or separated
- ☐ Lack of social or religious support
- ☐ History of suicide in immediate family
- ☐ Possession or access to gun Carries firearm
- ☐ Significant loss of employment
- ☐ Severe financial difficulties
- ☐ Severe problems with significant others
- ☐ Severe school difficulties
- ☐ Significant legal difficulties
- ☐ Severe worry / rumination
- ☐ Calm after agitated depression
- ☐ History of major depression
- ☐ History of schizophrenia or bipolar disorder
- ☐ Alcohol or heavy drug use
- ☐ Borderline personality disorder
- ☐ Organic brain syndrome
- ☐ Severe anxiety / panic
- ☐ Organized plan with lethal intent
- ☐ Blunted / flat affect
- ☐ Hopelessness
- ☐ Rapid mood shifts
- ☐ Command hallucinations
- ☐ Severe insomnia

Homicide / Violence Risk Factors:

- ☐ Violence / threats toward others
- ☐ Possession or access to gun
- ☐ Paranoid ideation
- ☐ Organic brain syndrome
- ☐ Heavy alcohol or drug use
- ☐ Previous history of violence
- ☐ Violent social environment
- ☐ Command hallucinations or delusions
- ☐ Borderline or antisocial personality disorder

Comments:

SUMMARY EVALUATION OF RISK OF SUICIDE / HOMICIDE / ASSAULTIVE BEHAVIOR:

Rank below your conclusion regarding this patient's SUICIDAL risk and make any comments:

☐ Low to No Risk ☐ Moderate Risk ☐ Imminent Risk

Rank below your conclusion regarding this patient's HOMICIDAL / ASSAULTIVE risk and make any comments:

☐ Low to No Risk ☐ Moderate Risk ☐ Imminent Risk

Comments: Patient denies any current suicidal or homicidal ideation or behavior. Pt does carry a firearm - Barrow

Evaluation completed by: [illegible] Date / Time: 6/8/05, 1255

Reviewed with Physician: Dr Mobley / D Taylor [illegible] Date / Time: 6-9-05, 1542

Reviewing Physician's Signature: Phyllis Mobley MD Date / Time: 6/10/05, 10:05AM

This guideline is not intended to preclude any additional assessment tool, nor is it a substitute for clinical judgement.

THREE RIVERS CENTER
FOR BEHAVIORAL HEALTH

CONSULTATION FORM

ARGOE MARTHA L SS#
062 W F P MR#:000024396
Adm date: 2005-06-09 DOB:
MOBLEY PHYLLIS
Act#: 1018795

PATIENT IDENTIFICATION

REASON FOR CONSULT: PSYCHOLOGICAL TESTING - 2nd OPINION

Ordered by: DR. PHYLLIS MOBLEY, MD

CONSULTATION FINDINGS: Martha Argoe is a 62 year-old married Caucasian female who was admitted on commitment papers by her husband on 06/10/05 due to concerns regarding the following symptoms: suspiciousness, paranoid ideation (ie, allegedly made statement regarding home being "bugged"), hallucinations of insects and warlocks, excessive spending, accusatory behavior toward spouse (ie, husband's infidelity) and refusal to seek treatment per information obtained in clinical records. Other information in medical records raises some question regarding possible OCD behaviors, such as not touching certain items in the home or manic symptoms (ie, flight of ideas, pressured speech during intake interview). At the time of this assessment, Ms. Argoe presented as an attractive woman with spontaneous affect and euthymic mood. Thought processes during interview were clear, coherent, and goal-directed. She denied any experiences of auditory or visual hallucinations, mood lability, sleep or appetite disturbance or increased suspiciousness. She alleges that her

IMPRESSION: husband is abusive, a heavy drinker, and that he put her in the hospital. She reports that she "drew a line in the sand" approximately 1½ years ago, moving into own room, putting lock on her door, and no longer cooking for spouse but instead going out to eat. She acknowledges mistrust of husband and marital conflict but denies acute distress or psychological symptoms/problems. She reports she is refusing medications because she does not need them and is concerned that husband could use that against her in the future if there were divorce proceeding. Throughout interview, Ms. Argoe was pleasant, cooperative, and appropriate.

Ms. Argoe completed the PAI to assist with assessment of symptoms, problems, and personality style. She attended appropriately to item content and responded to similar items consistently. Her pattern of responses suggests considerable defensiveness in responding. Consequently, she appears quite reluctant to admit minor faults, possibly even to herself. Given the high level of defensiveness, test results

RECOMMENDATIONS: are unlikely to be valid. Despite level of defensiveness, some areas where she described problems of greater intensity than is typical for defensive clients and merit further inquiry especially in light of her allegations of marital abuse include: stress in the environment, unsupportive family or friends, and suspiciousness. The PAI clinical profile revealed NO elevations suggestive of clinical psychopathology. This may be due to situational factors, as she seems reluctant to admit deficiencies or problems across many areas and motivated to present herself in favorable light. Additional information from reliable respondents (e.g. close friends, family members) is needed to help clarify issues and problems.

Signature: Farni Leonhardt, PhD Date / Time: 06/14/05

FOLLOW-UP:
Dx Impression:
I. Diagnosis deferred
II. Diagnosis deferred
III. Deferred
IV. Marital conflict, alleged victim of abuse

Signature: Farni Leonhardt, PhD Date / Time: 06/14/05

White - Hospital Copy Yellow - Consultant Copy

AP-7189-1 (Rev 1)

Thank you
R. Goodall

1.10.12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT

Martha Lewin Argoe,	)	
	)	Civil Action No.: 2007-CP-32-1981
Plaintiff,	)	
	)	
vs.	)	
	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,	)	**SECOND AMENDED COMPLAINT (Jury Trial Demanded)**
	)	
Defendants.	)	

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Based upon the Order of the Honorable Michael G. Nettles dated December 28, 2011, Plaintiff files this Second Amended Complaint by and through her undersigned counsel and would show unto the Court as follows:

NATURE OF CASE

1. This is a medical negligence case arising from a forced inpatient psychiatric evaluation which began on or about June 7, 2005. In addition, Plaintiff has asserted causes of action for assault and battery related to psychiatric medications she was forced to take but which were not medically necessary or medically warranted. In addition, Plaintiff has asserted causes of action against Carolina Care Plan because of that party's role in the Plaintiff's forced inpatient hospitalization.

PARTIES/JURISDICTION & VENUE

2. Upon information and belief, Defendant, Three Rivers Behavioral Health, LLC (hereinafter "Three Rivers") is a psychiatric inpatient facility located in Lexington County, South Carolina.
3. Upon information and belief, Three Rivers is now owned by Defendant, Psychiatric Solutions, Inc.
4. Upon information and belief, Psychiatric Solutions, Inc., is a corporation organized and existing under the laws of the state of South Carolina.
5. Upon information and belief, Defendant, Phyllis Bryan-Mobley, MD, is a resident of the state of South Carolina.
6. Upon information and belief, Defendant, Aiken Regional Medical Center-Aurora Pavilion (hereinafter "Aurora Pavilion"), is a corporation organized and existing under the laws of the state of South Carolina.
7. Upon information and belief, Defendant, David A. Steiner, MD, is a resident of the state of South Carolina.
8. Upon information and belief, Defendant, Cheryl C. Dodds, MD, is a resident of the state of South Carolina.
9. Upon information and belief, Defendant, Doris Ann Burrell, is a resident of the state of South Carolina.
10. Upon information and belief, Defendant, Carolina Care Plan, is a corporation organized and existing under the laws of a state other than South Carolina but which is authorized to do business and in fact does business within the state of South Carolina.

11. The majority of acts which give rise to this Complaint took place in Lexington County, South Carolina.

12. Upon information and belief, this Court has jurisdiction over the parties and subject matter and venue is properly asserted in Lexington County, South Carolina.

FACTUAL ALLEGATIONS

13. On or about June 6, 2005, Plaintiff's former husband (and her husband at the time) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court.

14. At that time, Plaintiff was not a danger to herself or other people.

15. Plaintiff's former husband filed the Application as part of a plan and scheme to have the Plaintiff committed to an inpatient psychiatric facility so that he would eventually be able to have access to her money, bank accounts and other material assets and could convert those things for his own use and benefit.

16. In the Application for Involuntary Emergency Hospitalization, Plaintiff's former husband made a number of material misrepresentations related to the Plaintiff's condition and behavior.

17. Based upon the material misrepresentations in the Application for Involuntary Emergency Hospitalization, the Probate Court issued an Order of Detention pursuant to SC Code Ann. § 44-17-40.

18. In relevant part, the Probate Court's order provided that:

> *"an officer of the peace take the person alleged to be mentally ill into custody for a period not to exceed 24 hours, during which detention, said person shall be examined by a licensed physician."*

19. On or about June 7, 2005, the Orangeburg County Sheriff's Department detained the Plaintiff pursuant to the Probate Court's Order and committed her to the care and custody at the Regional Medical Center of Orangeburg.

20. Pursuant to the Probate Court's Order, Plaintiff was evaluated by Defendant, Glenn Hooker, MD.

21. While Defendant Hooker saw the Plaintiff, he never performed an adequate psychiatric evaluation to determine if the Plaintiff should be involuntarily committed because she was a danger to herself or others.

22. Instead, Defendant Hooker referred the Plaintiff for a CT scan to the brain, which was negative.

23. Had Defendant Hooker performed an adequate and medically competent evaluation, he would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

24. Thereafter, that same day, Plaintiff was released from the Orangeburg Regional Medical Center and allowed to return home.

25. The following day, June 8, 2005, Defendant Hooker completed the necessary paperwork to have the Plaintiff involuntarily committed for inpatient psychiatric hospitalization and treatment, even though he had never performed an adequate or medically competent evaluation of the Plaintiff as was required by the Probate Court's Order and was dictated by the standard of care for psychiatrists.

26. That same day, June 8, 2005, Sheriff's deputies took the Plaintiff into custody and transported her to Defendant, Aurora Pavilion.

27. Upon admission at Aurora Pavilion, Plaintiff was initially seen and evaluated by Defendant, David A. Steiner, MD.

28. Defendant Steiner did not perform an adequate or competent assessment of the Plaintiff and had Defendant Steiner performed an adequate and competent examination, he would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

29. Because of Hooker and Steiner's inadequate, incomplete and incompetent evaluations of the Plaintiff, the Plaintiff was subjected to involuntary inpatient psychiatric hospitalization at Aurora that was not medically necessary or medically warranted.

30. As part of this involuntary inpatient psychiatric hospitalization, Plaintiff was given a full body search and strip search which was humiliating to her and would have been humiliating to any reasonable person under like or similar circumstances.

31. Around this same time, June 8, 2005, Defendant, Carolina Care Plan, assigned a medical manager and other medical professionals to Plaintiff's case because her medical bills during the involuntary commitment were being paid by Carolina Care Plan.

32. At that time, it was determined that she did not have benefits to stay at Aurora Pavilion and therefore plans were made to transfer her to another psychiatric facility for involuntary inpatient treatment.

33. The following day, June 9, 2005, Plaintiff was transferred and admitted to Defendant, Three Rivers.

34. At that time, she was seen and evaluated by Phyllis Bryan-Mobley, MD but Defendant Bryan-Mobley did an incomplete and incompetent evaluation of the Plaintiff and based upon Bryan-Mobley's incomplete and incompetent evaluation of the Plaintiff, the

Plaintiff remained involuntarily committed, despite the fact that she was not a danger to herself or other people.

35. Had Defendant Bryan-Mobley performed an adequate and medically competent evaluation, she would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

36. On or about June 10, 2005, Defendant Bryan-Mobley and Defendant Doris Ann Burrell were appointed by the Probate Court as examiners for the Plaintiff to determine if she was a danger to herself or others.

37. On or about June 21, 2005, the Probate Court conducted a hearing to determine whether the Plaintiff should continue to be involuntarily committed.

38. At the time of this hearing, and prior to the hearing, Defendants Bryan-Mobley and Burrell had never conducted adequate, complete or competent examinations of the Plaintiff to determine whether she was truly a danger to herself or other people.

39. Based upon their incomplete and incompetent examinations, which were grossly outside the standard of care for reasonable psychiatrists, psychiatric nurses, and other psychiatric professionals, these individuals indicated the Plaintiff was a danger to herself and was a danger to other people, even though they had not performed reasonable, complete, adequate and competent evaluations in order to allow them to make this determination.

40. Had these Defendants conducted proper, complete and competent examinations of Plaintiff, they would have easily determined the Plaintiff was not a danger to herself or other people and should not be subjected to involuntary commitment.

41. In fact, and by way of example only, during her involuntary commitment, the Plaintiff was given a personal assessment inventory by Leslie C. Morey, Ph.D. Dr. Morey

concluded that the Plaintiff was entirely within normal limits and there was no indication of significant psycho-pathology.

42. Nonetheless, Bryan-Mobley and Burrell simply ignored and disregarded such testing as well as a host of other evidence and instead based their diagnoses, in whole or in part, upon what was being told to them by the Plaintiff's now ex-husband and son who had ulterior motives for financial gain in keeping the Plaintiff involuntarily committed.

43. Because of the incomplete and incompetent examinations of the Plaintiff by the physicians described above and based upon the incomplete and incompetent reports these physicians produced without adequately and completely examining the Plaintiff, the Probate Court issued an order for continued hospitalization and involuntary commitment of the Plaintiff, even though reasonably prudent and reasonably diligent psychiatrists, psychiatric nurses and other psychiatric professionals would have easily determined that the Plaintiff was not a danger to herself or other people and was therefore not in need of inpatient psychiatric hospitalization.

44. Moreover, Defendants Bryan-Mobley and Burrell failed to undertake reasonable and necessary steps to verify the accuracy (or in this case, the inaccuracy) of the information being conveyed to them by Plaintiff's now ex-husband and her son.

45. Had these Defendants undertaken such reasonable and necessary steps they would have discovered that the information being conveyed to them by the Plaintiff's now ex-husband and her son was false, misleading and that the Plaintiff was neither a danger to herself or to others.

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46. Thereafter and as a direct and proximate result of the inadequate, incomplete, and incompetent examination of Bryan-Mobley and Burrell the Probate Court issued an order for the mandatory and involuntary hospitalization of the Plaintiff.

47. On or about June 27, 2005, Defendant, Cheryl C. Dodds saw and evaluated the Plaintiff.

48. At that time, Defendant Dodds noted that the Plaintiff was not suicidal or homicidal, i.e., she did not pose a danger to herself or others but nonetheless, Dodds and the other Defendants named herein continued with a course of treatment which included involuntarily hospitalization and the use of mind-altering medications, neither of which were medically necessary or warranted and thus were outside the standard of care.

49. On or about June 28, 2005 the Plaintiff's medical benefits were exhausted through Carolina Care Plan.

50. Nonetheless, Carolina Care Plan continued to pay for her inpatient involuntary commitment even though it knew or reasonably should have known that such commitment was not medically necessary or medically warranted based on the incomplete and incompetent evaluations of the above named physicians and health care providers.

51. Moreover, and upon information and belief, Defendant Carolina Care Plan had professional nurses and doctors reviewing Plaintiff's medical records and any reasonable review of these medical records would have revealed and should have revealed to CCP that the Plaintiff's involuntary commitment was not medically justified, medically warranted or medically necessary.

52. However because CCP failed to adequately review the incomplete and incompetent evaluations of the above described physicians, it continued to pay for benefits thereby allowing Plaintiff's involuntary commitment to continue.

53. Upon information and belief, had CCP stopped paying for benefits because the benefits were not medically necessary or medically warranted, the above described physicians would have lost any monetary incentive that they had to continue to detain the Plaintiff and treat the Plaintiff for conditions for which no treatment was necessary because the conditions simply did not exist.

54. Over the course of the next three (3) weeks, the Plaintiff continued to remain involuntarily committed against her will.

55. During the majority of her involuntary commitment, Plaintiff was forcibly medicated with a variety of mind-altering drugs, none of which were medically necessary or warranted but which in fact caused pain and sickness to the Plaintiff.

56. On or about July 20, 2005, Plaintiff was finally discharged from Three Rivers.

FOR A FIRST CAUSE OF ACTION AGAINST ALL NAMED DEFENDANTS MEDICAL NEGLIGENCE

57. Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.

58. Defendants owed Plaintiff a duty of reasonable and due care and specifically had a duty to use a degree of skill and care as reasonably prudent psychiatrists and/or other psychiatric professionals would use in examining and treating the Plaintiff.

59. Moreover, CCP had a duty to adequately and competently review medical records it obtained and only pay for medical treatment that was reasonable and necessary.

60. Defendants, individually and/or by and through their agents, employees, servants, representatives, and/or partners, breached their duties in one or more of the following particulars:

a. In failing to properly, completely and thoroughly evaluate the Plaintiff to determine if she was a danger to herself or others;

b. In continuing to commit the Plaintiff for involuntary inpatient psychiatric treatment when the Plaintiff was neither a threat to herself or others and her medical condition did not warrant such forced, involuntary, inpatient treatment;

c. In failing to timely and appropriately recognize that the Plaintiff was not a threat to herself or others and did not need to be involuntarily committed;

d. In failing to reasonably investigate the allegations that were made against the Plaintiff by her now ex-husband and son regarding her condition;

e. In failing to conduct a reasonable and prudent examination as reasonable and prudent psychiatrists, psychiatric nurses and psychiatric medical professionals would under like or similar circumstances;

f. In failing to appropriately treat and care for the Plaintiff;

g. In failing to recognize and diagnose that the Plaintiff was not a threat to herself or others;

h. In paying for medical care and treatment that was neither reasonable nor necessary and thereby creating a monetary incentive to the healthcare providers to continue to detain Plaintiff for inpatient psychiatric hospitalization;

i. In committing medical assault on the Plaintiff by putting her in reasonable fear of being forced to take mind-altering medication and drugs that were not medically necessary or medically warranted given Plaintiff's condition;

j. In committing medical battery on the Plaintiff by in fact forcing her to take mind-altering medications and drugs that were not medically necessary or medically warranted given Plaintiff's condition; and

k. In such additional particulars as may be learned through discovery and/or proven at trial.

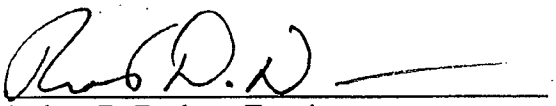
61. As a direct and proximate result of Defendants' negligent, grossly negligent, wanton, and/or reckless conduct as described more fully above, Plaintiff suffered injuries and damages which included but are not necessarily limited to an extended period of involuntary commitment and hospitalization against her will, the administration of drugs and medications against her will, mental anguish and anxiety as a result of her involuntary commitment, lost wages and such other actual, special and/or consequential damages as may be proven at trial.

62. Plaintiff hereby demands judgment against the above named Defendants and seeks damages for all actual, consequential and/or special damages plus an appropriate amount of punitive damages (as determined by a jury).

WHEREFORE, Plaintiff prays that the Court find for the Plaintiff and against the Defendants (jointly and severally) and that Plaintiff be awarded all damages allowed by law including but not necessarily limited to actual damages, consequential damages, special damages and punitive damages in an appropriate amount (as determined by a jury), that the Defendants

be taxed with the cost of this action and that the court award such additional and further relief, in law or equity, that the Court deems just and proper.

LAW OFFICES OF ROBERT DODSON, P.A.



Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: 803-252-2600
Facsimile: 803-771-2259
Email: rdodson@rdodsonlaw.com

This 6th Day of January, 2012

Columbia, South Carolina

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2012 JAN 17 AM 11:37
BETTY W. SANDERS
CLERK OF COURT
RICHLAND CO. SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT

Martha Lewin Argoe,	)	
	)	Civil Action No.: 2007-CP-32-1981
Plaintiff,	)	COPY
	)	
vs.	)	
	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,	)	**CERTIFICATE OF SERVICE**
	)	
Defendants.	)	

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I, Lindsay H. Valek, paralegal to the Law Office of Robert Dodson, PA, do hereby certify that I have caused the foregoing SECOND AMENDED COMPLAINT to be served upon the following parties at the following addresses via United States Postal Service, Postage Pre-Paid:

Sterling G. Davies, Esquire
McAngus Goudelock & Courie, LLC
PO Box 12519
Columbia, SC 29211-2519

Andrew N. Cole, Esquire
Christopher M. Adams, Esquire
Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Will Davidson, Esquire
1611 Devonshire Drive, 2nd Floor
PO Box 8568
Columbia, SC 29202

Noah M. Hicks, II, Esquire
Law Offices of Noah Hicks, II, LLC
PO Box 7996
Columbia, SC 29202

Molly Craig, Esquire
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

K. Michael Barfield, Esquire
PO Drawer H
Charleston, SC 29402-0197

George C. Beighley, Esquire
PO Drawer 7788
Columbia, SC 29202

James C. Parham, Jr., Esquire
James E. Parham, Jr., P.A.
P.O. Box 1576
Irmo, SC 29063

Lindsay H. Valek

This 10th Day of January, 2012

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	C/A No. 07-CP-32-1981
Plaintiff,	)	**DEFENDANT DAVID A. STEINER, M.D.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT (Jury Trial Requested)**
Versus	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, its successor, Phyllis Bryant-Mobley, MD; Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,	)	
Defendants.	)	

The Defendant, David A. Steiner, M.D. (hereafter "this Defendant"), hereby answers the Plaintiff's Second Amended Complaint, subject to any and all affirmative defenses, qualifications, motions and any other pleadings, as follows:

1. This Defendant denies each and every allegation in the Plaintiff's Second Amended Complaint which is not hereinafter specifically admitted.

AS TO NATURE OF CASE

2. In response to the allegations contained in Paragraph 1 of the Plaintiff's Second Amended Complaint, this Defendant admits only so much as alleges that this is a medical negligence case. Further responding, the allegations contained in Paragraph 1 of the Plaintiff's Second Amended Complaint state conclusions of law to which no response is required. To the extent that a response is required, those allegations are denied as written.

AS TO PARTIES, JURISDICTION, AND VENUE

3. This Defendant lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in Paragraphs 2, 3, 4, 5,

and 6 of the Plaintiff's Second Amended Complaint and therefore, those allegations are denied.

4. This Defendant admits the allegations contained in Paragraph 7 of the Plaintiff's Second Amended Complaint.

5. This Defendant lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in Paragraphs 8, 9 and 10 of the Plaintiff's Second Amended Complaint and therefore, those allegations are denied.

6. The allegations contained in Paragraphs 11 and 12 of the Plaintiff's Second Amended Complaint state conclusions of law to which no response is required. To the extent that a response is required, those allegations are denied.

AS TO FACTUAL ALLEGATIONS

7. This Defendant lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the Plaintiff's Second Amended Complaint and therefore, those allegations are denied.

8. In response to the allegations contained in Paragraphs 27, 28, 29, 30, 31, 32 and 33 of the Plaintiff's Second Amended Complaint, this Defendant admits only so much as alleges that he saw Plaintiff on or about June 8, 2005. Further responding, this Defendant refers to the medical records of Plaintiff for a description of all complaints, diagnosis and treatment. All remaining and inconsistent allegations contained in Paragraphs 27, 28, 29, 30, 31, 32 and 33 of the Plaintiff's Second Amended Complaint are denied.

9. This Defendant lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations contained in Paragraphs 34, 35, 36,

37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 of the Plaintiff's Second Amended Complaint and therefore, those allegations are denied.

ANSWERING THE FIRST CAUSE OF ACTION
(Medical Negligence)

10. In response to the allegations contained in Paragraph 57 of the Plaintiff's Second Amended Complaint, this Defendant reiterates and realleges each of the above paragraphs as if fully set forth herein verbatim.

11. The allegations contained in Paragraphs 58 and 59 of the Plaintiff's Second Amended Complaint state conclusions of law to which no response is required. To the extent that a response is required, those allegations are denied as written.

12. This Defendant denies the allegations contained in Paragraphs 60 (including subparts a, b, c, d, e, f, g, h, i, j and k), 61, 62 and the WHEREFORE paragraph, being the remaining allegations of the Plaintiff's Second Amended Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(No Deviation from the Standard of Care)

13. The care and treatment administered by this Defendant conformed to and was in full compliance with the standard of care. All care and treatment administered by this Defendant was within acceptable medical standards and methods, and, at no time pertinent hereto, did this Defendant deviate from any medical standard while caring for or tending to the Plaintiff. Consequently, the Plaintiff is barred from recovery against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(No Proximate Cause)

14. Even if this Defendant was negligent, as alleged in the Plaintiff's Second Amended Complaint, which is specifically denied, the negligence of this Defendant is not the direct or proximate cause of any injury alleged of the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Punitive Damages Unconstitutional)

15. Any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the Constitution of the State of South Carolina.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Comparative Negligence)

16. That, upon information and belief, even if this Defendant was negligent as described in the Complaint, which is specifically denied, the Plaintiff's alleged injuries and damages, if any, resulted from, or were due to the negligence of the Plaintiff and/or third parties, which combined and concurred with any negligence on the part of this Defendant, which is specifically denied, to bring about the claimed damages, if any, as a proximate cause thereof and without which the same would not have occurred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Noneconomic Damage Awards)

17. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina Code Ann. §15-32-200, et. seq. This Defendants is a health care providers or health care institutions as defined by S.C. Code Ann. § 15-32-210 and pursuant to §15-32-220 of the Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Collateral Estoppel)

18. That the issue of the legality of the Plaintiff's involuntary commitment, which is the subject of this suit has been finally determined against the Plaintiff in another court and therefore, the Plaintiff is precluded from re-litigating that issue in this case.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Intervening Negligence/Negligence of a Third Party)

19. That, upon information and belief, even if this Defendant was negligent in the manner described in the Second Amended Complaint, which is specifically denied, whatever injuries and damages, if any, which may have been sustained by the Plaintiff as a result of the accident were the direct and proximate result of the intervening and superseding negligence of third parties, for whose conduct this Defendant bears no responsibility. Therefore, the Plaintiff is barred from recovery against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

20. This Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the applicable Rules of Civil Procedure.

WHEREFORE, having answered the Plaintiff's Second Amended Complaint, subject to any motions and having asserted his affirmative defenses, this Defendant, David A. Steiner, M.D. prays that he be dismissed from this action and be awarded costs, fees and other relief that this Court deems just and proper.

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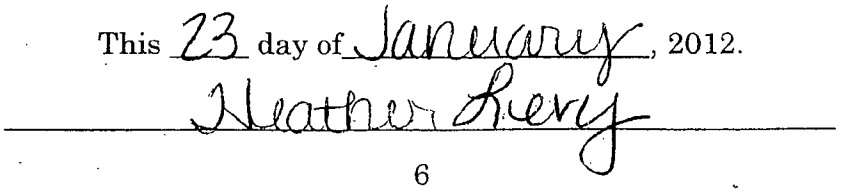
Attorneys for the Defendant
David A. Steiner, MD

1/23, 2012
Charleston, South Carolina
J:\docs\242.044\Answer (2nd Amd Complaint).doc

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 23 day of January, 2012.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	11th JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	CIVIL ACTION NUMBER: 07-CP-32-1981
Plaintiff,	)	
vs.	)	**ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT BY DEFENDANTS THREE RIVERS BEHAVIORAL HEALTH, LLC AND DORIS ANN BURRELL, RN**
Three Rivers Behavioral Health, Inc., and Psychiatric Solutions, Inc., Its Successor, Phyllis Brant-Mobley, MD, Aiken Regional Medical Center—Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN, and Carolina Care Plan	)	**(JURY TRIAL DEMANDED)**
Defendants.	)	

The Defendants Three Rivers Behavioral Health, LLC and Doris Ann Burrell, RN ("Defendants") answer the Plaintiff's Second Amended Complaint by denying each and every allegation not hereinafter admitted, demanding strict proof thereof, and further responds as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Defendants admit only so much of Paragraph 1 that alleges that Plaintiff now asserts claims alleging medical negligence allegedly arising from the involuntary commitment of Plaintiff, which commitment was pursuant to lawful Probate Court orders dated June 6 and 21, 2005. Defendants deny all other allegations of Paragraph 1 and demand strict proof thereof.

2. The allegations of Paragraph 2 are admitted.

3. Upon information and belief, the allegations of Paragraph 3 are denied.

4. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraphs 4, 5, 6, 7, and 8 and, therefore, denies the same.

5. Defendants admit the allegations of Paragraph 9.

6. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 10 and, therefore, denies the same.

7. Upon information and belief, the allegations of Paragraphs 11 and 12 are admitted.

8. Upon information and belief, the allegations of Paragraph 13 are admitted.

9. The allegations of Paragraph 14 are denied.

10. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraphs 15 and 16 and, therefore, denies the same.

11. In response to Paragraph 17, Defendants admit only that the Probate Court issued lawful orders for involuntary commitment dated June 6 and 21, 2005. Defendants deny all other allegations of Paragraph 17 and demand strict proof thereof.

12. In response to Paragraph 18, Defendants crave reference to the language of the lawfully entered Probate Court orders dated June 6 and 21, 2005, and denies all allegations inconsistent thereof.

13. Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 purportedly set forth background allegations for Plaintiff's Second Amended Complaint. In response to these Paragraphs, Defendants crave reference to the background facts as stated by the South Carolina Supreme Court in the reported case Argoe v. Three Rivers Behavioral Health, LLC, et al, 392 S.C. 462, 710 S.E.2d 67 (2011) (Argoe II), and denies all allegations inconsistent with the findings of the South Sarolina Supreme Court.

Further responding, Defendants reserve the right to file a motion to strike all allegations alleged in the Second Amended Complaint that are resolved, moot, or otherwise in conflict with the South Carolina Supreme Court's background and findings set forth in Argoe II.

14. Defendants deny the allegations contained in Paragraphs 43, 44, 45, and 46 and demand strict proof thereof.

15. Paragraphs 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 purportedly set forth background allegations for Plaintiff's Second Amended Complaint. In response to these Paragraphs, Defendants crave reference to the background facts as stated by the South Carolina Supreme Court in the reported case of Argoe II, and denies all allegations inconsistent with the findings of the South Sarolina Supreme Court. Further responding, Defendants reserve the right to file a motion to strike all allegations alleged in the Second Amended Complaint that are resolved, moot, or otherwise in conflict with the South Carolina Supreme Court's background and findings set forth in Argoe II.

16. . In response to Paragraph 57, Defendants reassert their responses in Paragraphs 1 through 15 as if restated here verbatim.

17. Defendants deny the allegations of Paragraph 58 as stated.

18. Upon information and belief, the allegations of Paragraph 59 are not directed to Defendants and require no response; however, to the extent a response is required or to the extent that these allegations can be construed to impart liability on Defendants, these allegations are denied.

19. Defendants deny the allegations of Paragraph 60, including subparts "a" through "k," and demand strict proof thereof.

20. Defendants deny the allegations of Paragraphs 61 and 62 and demand strict proof thereof.

21. Defendants deny that Plaintiff is entitled to the requested relief in the unnumbered "Wherefore" paragraph.

FOR A SECOND DEFENSE

22. The Plaintiff's Amended Complaint should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

23. Plaintiff's Amended Complaint should be dismissed for Plaintiff's failure to file a Notice of Intent to File Suit, an expert affidavit, or to mediate this matter pre-suit as required by S.C. Code Ann. Section 15-36-100.

FOR A FOURTH DEFENSE

24. Defendants assert that in the event of trial and/or verdict, the provisions of S.C. Code Ann. Section 15-38-15 should apply and be evaluated by the Judge and/or jury.

FOR A FIFTH DEFENSE

25. Defendants plead compliance with a valid Court Order and with the case and statutory laws of the State of South Carolina as a complete defense to all of the allegations set forth in Plaintiff's Second Amended Complaint.

FOR A SIXTH DEFENSE

26. At all time relevant, Defendants were acting in response to a valid Court Order and the statute of laws of South Carolina and claim absolute quasi judicial immunity as a complete defense to the allegations set forth in Plaintiff's Second Amended Complaint.

FOR A SEVENTH DEFENSE

27. Defendants plead complete and absolute privilege as a defense.

FOR AN EIGHTH DEFENSE

28. Defendants plead the applicable statute of limitations as a complete bar to this action.

FOR A NINTH DEFENSE

29. This action is barred by *res judicata* and collateral estoppel.

FOR A TENTH DEFENSE

30. Any injury or damage sustained by the Plaintiff was due to and caused by her physical and mental infirmities and a natural disease process, and Defendants plead such physical and mental infirmities as a complete bar to Plaintiff's Amended Complaint.

FOR AN ELEVENTH DEFENSE

31. The allegations of Plaintiff's Amended Complaint are barred by the statutory exemptions of S.C. Code Ann. Section 44-22-90.

FOR A TWELFTH DEFENSE

32. Without admitting any liability whatsoever, Defendants pleads the limitations to Plaintiff's damages, as set forth in S.C. Code Ann. Sections 15-32-210.

FOR A THIRTEENTH DEFENSE

33. Plaintiff's causes of action are barred by her failure to mitigate her damages.

FOR A FOURTEENTH DEFENSE

34. Plaintiff alleges damages, which are expressly denied, which were caused by concurring, superseding and/or intervening causes unrelated to any act or omission of the Defendants.

FOR A FIFTEENTH DEFENSE

35. Defendants plead consent authorization and waiver as defenses to all of the Plaintiff's causes of action.

FOR A SIXTEENTH DEFENSE

36. Any injuries or damages sustained by the Plaintiff were due to and caused and occasioned by Plaintiff's own negligence, gross negligence, recklessness, willfulness and wantonness which was the direct and proximate cause of Plaintiff's alleged injuries or damages, if any, and without which the same would not have occurred and, therefore, due to Plaintiff's sole negligence, gross negligence, recklessness, willfulness and wantonness, Plaintiff's claims are barred.

FOR A SEVENTEENTH DEFENSE

37. Any injuries sustained by Plaintiff were due to and caused by the sole negligence of third persons over which Defendants had no control and, therefore, Defendants should not be liable to the Plaintiff in any sum whatsoever.

FOR AN EIGHTEENTH DEFENSE

38. Even if Defendants were negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiff's injuries, if any, which is expressly denied, Defendants allege the Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than fifty percent (50%) to the cause of the accident, and therefore, Plaintiff's claims are barred.

FOR A NINETHEENTH DEFENSE

39. Even if Defendants were negligent in any respect, which is expressly denied, and even if such conduct on the part of Defendants operated as a greater than fifty percent (50%)

cause of Plaintiff's injuries, if any, which is also denied, Defendants are entitled to a determination as to the percentage which Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to Plaintiff's accident and resulting injuries, if any, and to a reduction of any amount awarded to the Plaintiff by an amount equal to the percentage of Plaintiff's own negligence.

FOR A TWENTIETH DEFENSE

40. Punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.

FOR A TWENTY-FIRST DEFENSE

41. Pursuant to Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 522 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury," therefore, Plaintiff's request for punitive damages "to be determined by the jury" violates the United States Constitution.

FOR A TWENTY-SECOND DEFENSE

42. Defendants at all times acted in good faith and in a reasonable manner.

FOR A TWENTY-THIRD DEFENSE

43. Defendants incorporates all of the affirmative defenses asserted by or available to the co-Defendants against the Plaintiff and Defendants specifically reserve any additional and/or affirmative defenses as may be available to it or revealed to it during the course of the investigation and/or discovery in this case.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants respectfully request that Plaintiff's Amended Complaint be dismissed, for costs associated with the defense of this action, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

COLLINS & LACY, P.C.

By: _____

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ATTORNEYS FOR DEFENDANTS
THREE RIVERS BEHAVIORAL
HEALTH, LLC AND DORIS ANN
BURRELL, RN

Columbia, South Carolina

January 23, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT BY DEFENDANTS THREE RIVERS BEHAVIORAL HEALTH, LLC AND DORIS ANN BURRELL, RN** was mailed to counsel of record in this proceeding this 23rd day of January, 2012.

Richelle Campbell

COUNSEL SERVED:

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Counsel for Plaintiff

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Counsel for Carolina Care Plan

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Martha Lewin Argoe,	)	Civil Action No. 07-CP-32-1981
Plaintiff,	)	
v.	)	
Three Rivers Behavioral Center, LLC and Psychiatric Solutions, Inc., It's Successor; Phyllis Bryant-Mobley, M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan,	)	**ANSWER TO SECOND AMENDED COMPLAINT ON BEHALF OF PHYLLIS BRYANT-MOBLEY, M.D.**
Defendants.	)	

FILED

The Defendant Phyllis Bryant-Mobley, M.D. answers the Second Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Second Amended Complaint fails to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE

2. The Defendant denies each and every paragraph not hereinafter admitted, qualified, or explained.

3. As to paragraph 1, setting forth the Plaintiff's "Nature of Case" the Defendant would admit that this action is alleged to be a medical negligence case. As to the remaining allegations, the Defendant would deny any liability to the Plaintiff or that a cause of action exist against her in this matter.

4. As to paragraphs 2, 3, 4, 6, 7, 8, 9, and 10, the Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

5. As to paragraph 5, the Defendant would admit same.

6. As to paragraphs 11 and 12, the Defendant would admit that jurisdiction has been alleged to exist in Lexington County along with venue.

7. As to paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same, and therefore denies same and demands strict proof thereof. The Defendant would crave reference to the medical records and the probate records of Orangeburg County in regard to the actions taken which resulted in the hospitalization and treatment of Plaintiff and the Defendant would allege that such allegations do not establish liability on her part.

8. As to paragraph 34, the Defendant would admit that she did see and evaluate the Plaintiff on or about June 10, 2005 and that such evaluation was complete and that based on such evaluation it was the Defendant's position that the Plaintiff was suffering from bi-polar disorder (I), with manic and psychotic features along with other disorders and that her judgment was impaired.

9. As to paragraph 35, 36, 37, 38, 39 and 40, the Defendant would deny same as stated and demand strict proof thereof. By way of explanation, the Defendant alleges that her evaluation was adequate and complete and at the time of her evaluation the Defendant believed that the Plaintiff's behavior was such that it did, in fact, present a danger to herself and others and such findings were later presented to the Darlington County Probate Court and that such

findings were later ratified by the Court pursuant to an order which committed the Plaintiff to a mental health facility for in-patient care and treatment because of her lack of insight and capacity to make reasonable decisions with respect to her treatment and because she was a danger to herself and others.

10. As to paragraph 41, the Defendant would crave reference to the records concerning any evaluation performed by Leslie C. Morey, Ph.D. and any conclusions she had. The Defendant would, however, deny that such finding establish any liability on the part of this Defendant.

11. As to paragraph 42, the Defendant would deny same as stated and demand strict proof thereof.

12. As to paragraph 43, the Defendant would deny same as stated. By way of explanation, the Defendant would admit that the Probate Court did issue an order for continued hospitalization and involuntary commitment based on the evidence presented to the Court.

13. As to paragraphs 44, 45, and 46 the Defendant would deny same and demand strict proof thereof.

14. As to paragraphs 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56, the Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

15. As to paragraph 57, the Defendant would reiterate and reallege each and every paragraph and affirmative defense as if set forth herein verbatim..

16. As to paragraph 58, the Defendant would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to

establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

17. As to paragraph 59, the Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

18. As to paragraphs 60, 61 and 62 the Defendant would deny same and demand strict proof thereof.

FOR A THIRD DEFENSE

19. The Defendant would allege that at all times herein where presenting evidence to the Probate Court the Defendant would enjoy absolute immunity as a witness.

FOR A FOURTH DEFENSE

20. The Defendant would allege that based on the proceedings in the Probate Court that this action is barred under the doctrine of issue preclusion.

FOR A FIFTH DEFENSE

21. The Defendant would allege that the Plaintiff has failed to exhaust certain judicial remedies available to her and that therefore this action should be barred.

FOR A SIXTH DEFENSE

22. The Defendant would allege that this action is barred by the findings of the Probate Court which ratified the determination that the Plaintiff presented a danger to herself and others and was subject to judicial commitment.

FOR A SEVENTH DEFENSE

23. This action is barred against this Defendant, since this Defendant is entitled to judicial immunity or quasi judicial immunity.

FOR AN EIGHTH DEFENSE

24. At all times pertinent, this Defendant's actions was made in good faith and in a reasonable manner and therefore the Defendant is immune from suit.

FOR A NINTH DEFENSE

25. At all times pertinent, this Defendant was acting as medical practitioners in regards to her evaluations and treatment of Plaintiff pursuant to South Carolina Law with the actual and/or implied consent of Plaintiff pursuant to South Carolina Law.

FOR A TENTH DEFENSE

26. Plaintiff's Second Amended Complaint should be dismissed for Plaintiff's failure to file a Notice of Intent to File Suit, an expert affidavit, or to mediate this matter presuit as required by S.C. Code Ann. Section 15-36-100.

FOR AN ELEVENTH DEFENSE

27. Defendant pleads complete and absolute privilege as a defense.

FOR A TWELTH DEFENSE

28. This Defendant alleges that the Plaintiff has failed to mitigate her damages.

FOR A THIRTEENTH DEFENSE

29. This action is barred by S.C. Code Ann. Section 44-17-900.

FOR A FOURTEENTH DEFENSE

30. This action is barred by the doctrine of consent.

FOR A FIFTEENTH DEFENSE

31. The Defendant, upon information and belief, alleges that any injuries or damages allegedly suffered by the Plaintiff, without admitting same to be true, were due to and caused entirely by the negligence of the Plaintiff or the Plaintiff's negligence which is more than the Defendant's negligence, and that such is a complete bar to the Plaintiff's recovery herein. Further, the Defendant, upon information and belief, alleges that if the Plaintiff's negligence was less than the Defendant's negligence, that such negligence should be compared to that negligence of the Defendant, so as to apportion the relative fault as to each party.

FOR A SIXTEENTH DEFENSE

32. That upon information and belief, any damages or injuries alleged in the Second Amended Complaint were due to and proximately caused by the intervening negligence, recklessness, willfulness, and wantonness of a third party over which the Defendant had no control and these Defendant is not liable to the Plaintiff for such actions in any way.

FOR A SEVENTEENTH DEFENSE

33. The Defendant would allege that any claims for punitive damages are in violation of the South Carolina Constitution and United States Constitution.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiff, the Defendant Phyllis Bryant-Mobley, M.D. prays that the Second Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: _____

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ATTORNEY FOR DEFENDANT PHYLLIS BRYANT-MOBLEY, M.D.

COLUMBIA, SOUTH CAROLINA

JANUARY 19, 2012

FILED

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Martha Lewin Argoe,	)	
Plaintiff,	)	Civil Action No. 07-CP-32-1981
v.	)	**CERTIFICATE OF SERVICE**
Three Rivers Behavioral Center and Psychiatric Solutions, It's Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker, M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan,	)	
Defendants.	)	

FILED

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendant Phyllis Bryant-Mobley, does hereby certify that service of the **ANSWER OF THE SECOND AMENDED COMPLAINT ON BEHALF OF DEFENDANT, PHYLLIS BRYANT-MOBLEY, M.D. along with DEFENDANT MOBLEY'S FIRST SET OF INTERROGATORIES TO PLAINTIFF** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of January, 2012, addressed as follows:

Robert D. Dodson, Esquire
1722 Main Street, Suite 200
Columbia, South Carolina 29201

FILED

Lisa A. Delzotti, Esquire
Gray T. Culbreath, Esquire
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1.13.12 COPY

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
Martha Lewin Argoe, Plaintiff, vs. Three Rivers Behavioral Health, LLC, and Psychiatric Solutions, Inc., Its Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker, M.D.; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D., Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III, Defendants.	Civil Action Number: 07-CP-32-1981 ANSWER TO SECOND AMENDED COMPLAINT ON BEHALF OF DEFENDANT, CHERYL C. DODDS, M.D.

The Defendant, Cheryl C. Dodds, M.D., answers the Second Amended Complaint, as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Second Amended Complaint except those hereinafter specifically admitted, qualified or explained.

2. The Defendant is without sufficient knowledge or information upon which to form a belief with respect to the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11 and 12, of the Amended Complaint, denies the same and demands strict proof thereof.

3. The Defendant makes reference to the Plaintiff's medical/mental health records for the exact nature and extent of the medical/mental health care rendered to her by the Defendant and by other health care providers, and the Defendant denies every allegation in the Second Amended Complaint to the contrary.

4. The Defendant denies all of the remaining allegations contained in the Second Amended Complaint and denies that she violated any standards of medical practice in the care and treatment of the Plaintiff that are a proximate cause of her alleged injuries and damages.

FOR A SECOND DEFENSE

5. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint were due to and caused her physical and mental infirmities and a natural disease process, and the Defendant pleads such physical and mental infirmities and natural disease process as a complete bar to this action.

FOR A THIRD DEFENSE

6. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint could not be avoided, and the Defendant pleads an unavoidable accident as a complete bar to this action.

FOR A FOURTH DEFENSE

7. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint were a proximate result of one or more independent, efficient and intervening causes, which the Defendant affirmatively pleads as a complete bar to this action.

FOR A FIFTH DEFENSE

8. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint were caused and occasioned by events over which the Defendant had no control or right of control, thereby relieving the Defendant from any liability or responsibility herein.

FOR A SIXTH DEFENSE

9. The Defendant pleads the applicable statute of limitations as an affirmative defense and a complete bar to this action.

FOR A SEVENTH DEFENSE

10. The Second Amended Complaint fails to state a claim against the Defendant upon which relief can be granted, and the Second Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN EIGHTH DEFENSE

11. The allegations of the Second Amended Complaint are barred by the statutory exemptions of S. C. Code Ann. Section 44-22-90.

FOR A NINETH DEFENSE

12. The allegations of the Second Amended Complaint are barred by the doctrine of lawful authority.

FOR A TENTH DEFENSE

13. The allegations of the Second Amended Complaint are barred by the doctrines of good faith, reasonableness and privilege.

FOR AN ELEVENTH DEFENSE

14. The allegations of the Second Amended Complaint are barred by the doctrines of waiver, estoppel, judicial estoppel, collateral estoppel, laches and release.

FOR A TWELFTH DEFENSE

15. The allegations of the Second Amended Complaint are barred by the doctrine of consent.

FOR A THIRTEENTH DEFENSE

16. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint were the direct and proximate result of her

comparative/contributory negligence, and the Plaintiff's recovery, if any, should be barred or reduced proportionately by the Plaintiff's comparative/contributory negligence pursuant to established case law.

FOR A FOURTEENTH DEFENSE

17. The allegations of the Second Amended Complaint are barred by the Public Duty Rule and public policy.

FOR A FIFTEENTH DEFENSE

18. The allegations of the Second Amended Complaint are barred by the doctrine of res judicata, including opinions issued by the South Carolina Appellate Courts regarding this case.

FOR A SIXTEENTH DEFENSE

19. The allegations of the Second Amended Complaint are barred by the doctrines of absolute privilege and conditional privilege.

FOR A SEVENTEENTH DEFENSE

20. The allegations of the Second Amended Complaint are barred by the doctrine of absolute quasi-judicial immunity.

WHEREFORE, having fully answered the Second Amended Complaint, the Defendant prays that it be dismissed with costs assessed against the Plaintiff.

James E. Parham, Jr.
Attorney for the Defendant,
Cheryl C. Dodds, M.D.
220 Ministry Drive
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555
(803) 749-0277 (Facsimile)

January 13, 2012

CERTIFICATE OF SERVICE

I, Sherri Johnson, do hereby certify that on the 13th day of January, 2012, I mailed a copy of the foregoing Answer to Seconded Amended Complaint on Behalf of the Defendant, Cheryl C. Dodds, M.D., by depositing a copy of the same in the United States Post Office at Columbia, South Carolina, with proper postage affixed addressed to the following:

Robert D. Dodson, Esquire
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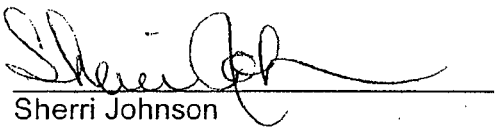

Sherri Johnson

2.3.12

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON MARTHA LEWIN ARGOE, Plaintiff, vs. THREE RIVERS BEHAVIORAL HEALTH, LLC AND PSYCHIATRIC SOLUTIONS, INC., ITS SUCCESSOR, PHYLLIS BRYAN-MOBLEY, MD, AIKEN REGIONAL MEDICAL CENTER-AURORA PAVILION, DAVID A. STEINER, MD, CHERYL C. DODDS, MD, DORIS ANN BURRELL, RN AND CAROLINA CARE PLAN, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2007-CP-32-1981 **ANSWER TO SECOND AMENDED COMPLAINT** **(Jury Trial Demanded)**

Defendant Psychiatric Solutions, Inc. ("Defendant") answers the Second Amended Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Second Amended Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendant objects to the caption of the Second Amended Complaint to the extent it lists Defendant as the successor of Three Rivers Behavioral Health, LLC. Defendant was involved in a stock purchase only of an entity that owned Defendant Three Rivers Behavioral Health, LLC but Defendant did not assume responsibility for any of Defendant Three Rivers Behavioral Health, LLC's liabilities and therefore Defendant is not a true successor and denies the same.

FOR A THIRD DEFENSE

3. The Second Amended Complaint fails to state facts sufficient to constitute any cause of action for which relief may be granted against Defendant and should therefore be dismissed as to Defendant pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

4. Answering Paragraph 1 of the Second Amended Complaint, Defendant admits that Plaintiff asserts a cause of action for medical negligence against all named Defendants. Defendant denies the remaining allegations of Paragraph 1 of the Second Amended Complaint because the only cause of action Plaintiff asserted is for medical negligence.

5. Defendant admits the allegations of Paragraph 2 of the Second Amended Complaint.

6. Defendant denies the allegations of Paragraph 3 of the Second Amended Complaint.

7. Defendant denies the allegations of Paragraph 4 of the Second Amended Complaint.

8. Defendant lacks sufficient knowledge or information regarding the truth of the allegations of Paragraph 5 of the Second Amended Complaint and demands strict proof.

9. Defendant lacks sufficient knowledge or information regarding the truth of the allegations of Paragraph 6 of the Second Amended Complaint and demands strict proof.

10. Defendant lacks sufficient knowledge or information regarding the truth of the allegations of Paragraph 7 of the Second Amended Complaint and demands strict proof.

11. Defendant lacks sufficient knowledge or information regarding the truth of the allegations of Paragraph 8 of the Second Amended Complaint and demands strict proof.

12. Defendant lacks sufficient knowledge or information regarding the truth of the allegations of Paragraph 9 of the Second Amended Complaint and demands strict proof.

13. Defendant lacks sufficient knowledge or information regarding the truth of the allegations of Paragraph 10 of the Second Amended Complaint and demands strict proof.

14. Answering Paragraph 11 of the Second Amended Complaint, Defendant references the Second Amended Complaint which includes allegations of acts occurring in multiple counties.

15. Defendant objects to Paragraph 12 of the Second Amended Complaint on the grounds it calls for legal conclusion and does not require a response.

16. Answering Paragraph 13 of the Second Amended Complaint, Defendant craves reference to the document alleged and admits those allegations of said paragraph consistent with the document but denies any allegations which are inconsistent and Defendant further craves reference to an Order of Detention issued and executed that same day by The Honorable Pandora Jones-Glover.

17. Based on information and belief, Defendant denies the allegations of Paragraph 14 of the Second Amended Complaint.

18. Defendant lacks sufficient knowledge and information to form a belief regarding the truth of the allegations of Paragraph 15 of the Second Amended Complaint and demands strict proof.

19. Defendant lacks sufficient knowledge and information to form a belief regarding the truth of the allegations of Paragraph 16 of the Second Amended Complaint, Defendant craves reference to the alleged document and Defendant demands strict proof.

20. Answering Paragraph 17 of the Second Amended Complaint, Defendant admits an Order of Detention was issued on June 6, 2005 by The Honorable Pandora Jones-Glover but denies the remaining allegations of said paragraph. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

21. Defendant admits the allegations of Paragraph 18 of the Second Amended Complaint.

22. Answering Paragraph 19 of the Second Amended Complaint, Defendant admits, based on information and belief, that on the date alleged, the Plaintiff was transported to the emergency room of Regional Medical Center of Orangeburg pursuant to the Probate Court's Order for evaluation.

23. Based on information and belief, Defendant admits the allegations of Paragraph 20 of the Second Amended Complaint.

24. Based on information and belief, Defendant denies the allegations of Paragraph 21 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

25. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 22 of the Second Amended Complaint and demands strict proof.

26. Based on information belief, Defendant denies the allegations of Paragraph 23 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

27. Answering Paragraph 24 of the Second Amended Complaint and based upon information and belief, Defendant admits the allegations of said paragraph and further states that Plaintiff was instructed to return the following day for further evaluation.

28. Answering Paragraph 25 of the Second Amended Complaint and based upon information and belief, Defendant admits that on the date alleged, Defendant Hooker completed the appropriate and necessary paperwork to have Plaintiff involuntarily committed for inpatient psychiatric hospitalization and treatment but denies the remaining allegations of said paragraph and demands strict proof. Defendant craves reference to the document(s) identified in this paragraph. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

29. Based on information and belief, Defendant admits the allegations of Paragraph 26 of the Second Amended Complaint.

30. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 27 of the Second Amended Complaint and demands strict proof.

31. Based on information and belief, Defendant denies the allegations of Paragraph 28 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

32. Based on information and belief, Defendant denies the allegations of Paragraph 29 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

33. Answering Paragraph 30 of the Second Amended Complaint, Defendant lacks sufficient knowledge and information to form a belief as to the truth of said allegations regarding what searches were performed at Aurora Pavilion, if any.

34. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 31 of the Second Amended Complaint and demands strict proof.

35. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 32 of the Second Amended Complaint and demands strict proof.

36. Defendant admits the allegations of Paragraph 33 of the Second Amended Complaint.

37. Answering Paragraph 34 of the Second Amended Complaint, Defendant admits that Dr. Mobley treated and/or evaluated Plaintiff at some point after her arrival at Three Rivers. Defendant denies all remaining allegations of Paragraph 34 of the Second Amended Complaint not specifically admitted and demands strict proof. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

38. Defendant denies the allegations of Paragraph 35 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material

misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

39. Answering Paragraph 36 of the Second Amended Complaint, Defendant references the Order.

40. Defendant admits the allegations of Paragraph 37 of the Second Amended Complaint and further craves reference to the Order of Judgment by Darlington County Probate Court dated June 21, 2005.

41. Defendant denies the allegations of Paragraph 38 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

42. Defendant denies the allegations of Paragraph 39 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

43. Defendant denies the allegations of Paragraph 40 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

44. Answering Paragraph 41 of the Second Amended Complaint, Defendant craves reference to the alleged personal assessment inventory by Dr. Morey. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

45. Based on information and belief, Defendant denies the allegations of Paragraph 42 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

46. Based on information and belief, Defendant denies the allegations of Paragraph 43 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

47. Based on information and belief, Defendant denies the allegations of Paragraph 44 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

48. Based on information and belief, Defendant denies the allegations of Paragraph 45 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

49. Defendant denies the allegations of Paragraph 46 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

50. Answering Paragraph 47 of the Second Amended Complaint, Defendant craves reference to Plaintiff's medical records.

51. Answering Paragraph 48 of the Second Amended Complaint, Defendant craves reference to Plaintiff's medical documents. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

52. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 49 of the Second Amended Complaint and demands strict proof.

53. Defendant lacks sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 50 of the Second Amended Complaint and demands strict proof. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

54. Defendant denies the allegations of Paragraph 51 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

55. Defendant denies the allegations of Paragraph 52 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

56. Defendant denies the allegations of Paragraph 53 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material

misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

57. Defendant objects to Paragraph 54 of the Second Amended Complaint on the grounds it is vague, ambiguous and undefined as to the time for when the "next three weeks" began. Further answering Paragraph 54 of the Second Amended Complaint, Defendant craves reference to Plaintiff's medical records.

58. Defendant denies the allegations of Paragraph 55 of the Second Amended Complaint. Further answering Paragraph 55 of the Second Amended Complaint, Defendant craves reference to Plaintiff's medical records. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

59. Based on information and belief, Defendant admits the allegations of Paragraph 56 of the Second Amended Complaint.

60. Defendant asserts it is not required to respond to Paragraph 57 of the Second Amended Complaint but, to the extent it is, Defendant reasserts and realleges each and every other allegation of its pleadings and motions as if repeated herein verbatim.

61. Defendant objects to Paragraph 58 of the Second Amended Complaint on the grounds it calls for legal conclusions and does not require a response. Subject to this objection, Defendant denies it ever owed Plaintiff a duty based on the time of her treatment versus Defendant's stock purchase of Three Rivers.

62. Defendant objects to Paragraph 59 of the Second Amended Complaint on the grounds it calls for legal conclusions and does not require a response.

63. Defendant denies the allegations of Paragraph 60 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

64. Defendant denies the allegations of Paragraph 61 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

65. Defendant denies the allegations of Paragraph 62 of the Second Amended Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

66. Defendant denies Plaintiff is entitled to relief from Defendant requested in the Prayer of the Complaint. Defendant further asserts Plaintiff is barred from alleging any material misrepresentation based on the law of this case as established by prior orders and rulings of various courts in South Carolina.

FOR A FIFTH DEFENSE
(Stock Sale)

67. On December 15, 2006, Psychiatric Solutions, Inc.'s ("Solutions") wholly owned subsidiary, Premier Behavioral Solutions, Inc. ("Premier") entered into a stock sale purchase of Three River Healthcare Group, LLC, Three Rivers SPE Holding, LLC and Three Rivers SPE Manager, Inc. (hereinafter "Three Rivers", LLC). Pursuant to the agreement, Premier purchased all of the securities[1] from Three Rivers.

[1] The Securities Act of 1933 and the Securities Exchange Act of 1934 as well as the Uniform Securities Act, found

68. The Purchase Agreement calls for the Shareholders of Three Rivers to pay all of the companies' indebtedness prior to the closing of the securities sale. Section 10.1 of the Purchase Agreement requires Three Rivers to indemnify and hold harmless Premier/Solutions from any and all liabilities, expenses and/or obligations arising from the acts or commissions of Three Rivers, its officers, directors, shareholders, employees, agents and independent contractors constituting medical malpractice by any such Person, occurring before January 1, 2007.

69. Based upon the language of the agreement and the definition of Securities as defined by both our federal and state government, the Purchase Agreement, did not encompass or include any liabilities incurred by Three Rivers prior to January 1, 2007. As such, the claim by the Plaintiff against Solutions should be dismissed as Solutions is not a proper party to this lawsuit and Plaintiff have not established and/or alleged any facts which would support its claims against Solutions.

FOR A SIXTH DEFENSE
(Res Judicata)

70. The above referenced Order of Judge Jones-Glover was reviewed by the Honorable Tiffany Provence in a related proceeding to which the Plaintiff was a party. Judge Provence ruled that Judge Jones' commitment Order was proper. Judge Provence's Order found there were no violations of Plaintiff's rights under the Probate Code and concluded the Plaintiff's involuntary commitment was proper as it was handled within the realm of the Probate Code. The Plaintiff did not appeal the Order of Judge Jones.

71. Based upon the Plaintiff's failure to appeal the Order of Judge Provence, the doctrine of Res Judicata applies and the final judgment on the merits binds the Plaintiff in this

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at S.C. Code Section 35-1-10 et seq. generally define securities as the investment of capital in a common enterprise, for profits from the combined efforts of others. Obligations to pay are not considered securities unless they are traded on the open market.

action. A final judgment in a prior action binds the parties in a second action based upon the same claims and issues that might have been litigated in the first action. Hilton Head Ctr. Of South Carolina Inc. v. Public Serv. Comm'n. 294, S.C. 9, 362 S.E.2d 176 (1987); Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). Based upon the doctrine of res judicata as well as collateral estoppel, the Plaintiff is barred from arguing the June 6, 2005 commitment order was improper or that Psychiatric Solutions was not justified in relying on the validity of the Order.

FOR A SEVENTH DEFENSE

72. Defendant further asserts that all the prior orders and rulings of the Courts which have addressed this case and other matters related to the allegations of the Second Amended Complaint bar some, most and/or every factual allegation and cause of action asserted by Plaintiff which in any way relate to Defendant. Based on prior orders which relate to the subject matter alleged in the Second Amended Complaint which have enter been appealed to the South Carolina Supreme Court or which were not appealed, Defendant asserts some, most and/or all of Plaintiff's factual allegations should be stricken from Plaintiff's pleadings. Based on this same argument, Defendant asserts it is entitled to a full dismissal with prejudice from all claims asserted against it.

FOR AN EIGHTH DEFENSE

73. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint were due to and caused her physical and mental infirmities and a natural disease process, and Defendant pleads such physical and mental infirmities and natural disease process as a complete bar to this action.

FOR A NINTH DEFENSE

74. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint could not be avoided, and Defendant pleads an unavoidable accident as a complete bar to this action.

FOR A TENTH DEFENSE

75. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint were a proximate result of one or more independent, efficient and intervening causes, which Defendant affirmatively pleads as a complete bar to this action.

FOR AN ELEVENTH DEFENSE

76. Defendant would allege and show that any injury and damage claimed by the Plaintiff was directly and proximately caused by the intervening and superseding the acts of negligence, willfulness and gross negligence of parties and/or non-parties other than this Defendant.

FOR A TWELFTH DEFENSE

77. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint were caused and occasioned by events over which Defendant had no control or right of control, thereby relieving Defendant from any liability or responsibility herein.

FOR A THIRTEENTH DEFENSE

78. Defendant pleads the applicable statute of limitations as an affirmative defense and a complete bar to this action.

FOR A FOURTEENTH DEFENSE

79. The Second Amended Complaint fails to state a claim against Defendant upon which relief can be granted, and the Second Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FIFTEENTH DEFENSE

80. The allegations of the Second Amended Complaint are barred by the statutory exemptions of S.C. Code Ann. Section 44-22-90.

FOR A SIXTEENTH DEFENSE

81. The allegations of the Second Amended Complaint are barred by the doctrine of lawful authority.

FOR A SEVENTEENTH DEFENSE

82. The allegations of the Second Amended Complaint are barred by the doctrines of good faith, reasonableness and privilege.

FOR AN EIGHTEENTH DEFENSE

83. The allegations of the Second Amended Complaint are barred by the doctrines of waiver, estoppel, judicial estoppel, collateral estoppel, laches and release.

FOR A NINETEENTH DEFENSE

84. The allegations of the Second Amended Complaint are barred by the doctrine of consent.

FOR A TWENTIETH DEFENSE

85. Defendant alleges, upon information and belief, that any injury and damage sustained by Plaintiff were due to and caused by the sole and negligent acts or omissions of some other person or persons other than Defendant over whom Defendant neither had nor exercised

any authority or control, and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A TWENTY-FIRST DEFENSE

86. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Second Amended Complaint were the direct and proximate result of her comparative/contributory negligence, and the Plaintiff's recovery, if any, should be barred or reduced proportionately by the Plaintiff's comparative/contributory negligence pursuant to established case law.

FOR A TWENTY-SECOND DEFENSE

87. The allegations of the Second Amended Complaint are barred by the Public Duty Rule and public policy.

FOR A TWENTY-THIRD DEFENSE

88. The allegations of the Second Amended Complaint are barred by the doctrine of res judicata, including opinions issued by the South Carolina Appellate Courts regarding this case.

FOR A TWENTY-FOURTH DEFENSE

89. The allegations of the Second Amended Complaint are barred by the doctrines of absolute privilege and conditional privilege.

FOR A TWENTY-FIFTH DEFENSE

90. The allegations of the Second Amended Complaint are barred by the doctrine of absolute quasi-judicial immunity.

FOR A TWENTY-SIXTH DEFENSE

91. Each and/or every allegation made by Plaintiff which purportedly sets forth background allegations for Plaintiff's Second Amended Complaint, including but not limited to paragraph numbers 19 through 42 and paragraphs 47 through 56 have inconsistencies with the findings of the South Carolina Supreme Court as reported in the case Argoe v. Three Rivers Behavioral, LLC, et al. 392 S.C. 462, 710, S.E.2d 67 (2011) (hereinafter referred to as Argoe II). Defendant therefore denies all allegations of the Second Amended Complaint which are inconsistent with the findings of the South Carolina Supreme Court and further reserves its rights to file a motion to strike any and all allegations that have been resolved, or in conflict with or been rendered moot by Argoe II.

FOR A TWENTY-SEVENTH DEFENSE

92. Plaintiff's Second Amended Complaint should be dismissed because Plaintiff file a Notice of Intent to File Suit, failed to include an expert affidavit with her filings and/or failed to mediate this matter pre-suit as required by the South Carolina Code including but not limited to S.C. Code Ann. § 15-36-100.

FOR A TWENTY-EIGHTH DEFENSE

93. Defendant pleads it and all other defendants acted in compliance with valid Court orders and the statues of the laws of South Carolina and such compliance is a complete defense to the allegations set forth in Plaintiff's Second Amended Complaint.

FOR A TWENTY-NINTH DEFENSE

94. Defendant pleads consent authorization as waiver and defenses to Plaintiff's allegations.

FOR A THIRTIETH DEFENSE

95. Defendant pleads that at all times it acted in good faith and in a reasonable manner.

FOR A THIRTY-FIRST DEFENSE

96. Defendant incorporates all the affirmative defenses asserted by or available to the co-defendants against the Plaintiff and Defendant specifically reserves any additional and/or affirmative defenses as may be available to it or revealed during the course of the investigation and/or discovery of this case.

FOR A THIRTY-SECOND DEFENSE
(Noneconomic Damage Awards)

97. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina Code Ann. § 15-32-200, et. seq. This Defendants is a health care providers or health care institutions as defined by S.C. Code Ann. § 15-32-210 and pursuant to § 15-32-220 of the Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

FOR A THIRTY-THIRD DEFENSE
(Collateral Estoppel)

98. That the issue of the legality of the Plaintiff's involuntary commitment, which is the subject of this suit has been finally determined against the Plaintiff in another court and therefore, the Plaintiff is precluded from re-litigating that issue in this case.

FOR A THIRTY-FOURTH DEFENSE
(Intervening Negligence/Negligence of a Third Party)

99. That, upon information and belief, even if this Defendant was negligent in the manner described in the Second Amended Complaint, which is specifically denied, whatever injuries and damages, if any, which may have been sustained by the Plaintiff as a result of the

accident were the direct and proximate result of the intervening and superseding negligence of third parties, for whose conduct this Defendant bears no responsibility. Therefore, the Plaintiff is barred from recovery against this Defendant.

WHEREFORE, having fully answered, Defendant prays that the Second Amended Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

Sterling G. Davies
Post Office Box 12519, Capitol Station
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Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR DEFENDANT
PSYCHIATRIC SOLUTIONS, INC.

February 3, 2012

Civil Action No. 07-CP-32-1981

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of February, 2012 served a copy of an Answer to Second Amended Complaint, by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

George C. Beighley, Esquire
Richardson, Plowden & Robinson
Post Office Drawer 7788
Columbia, South Carolina 29202
Counsel for Aiken Regional Medical Center

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Counsel for Plaintiff

Andrew N. Cole, Esq. and Christopher M. Adams, Esq.
Collins & Lacy, PC
Post Office Box 12487
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Counsel for Three Rivers Behavioral Health, LLC And Doris Ann Burrell, RN

William H. Davidson, II, Esquire
Davidson and Lindemann, PA
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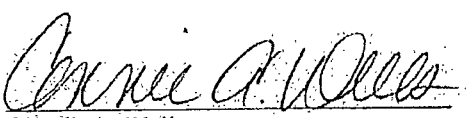
Counsel for Dr. Brant-Mobley

James E. Parham, Jr., Esquire
Post Office Box 1576
Irmo, South Carolina 29063
Counsel for Cheryl C. Dodds, MD

Molly H. Craig, Esquire
Hood Law Firm, LLC
Post Office Box 1508
Charleston, South Carolina 29401
Counsel for David Steiner

Noah M. Hicks, II, Esquire
Post Office Box 7996
Columbia, South Carolina 29202
Counsel for Carolina Care Plan



Connie A. Wells
Legal Assistant to Sterling G. Davies

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Martha Lewin Argoe,)
)
)
☐ Plaintiff(s),)
Versus)
)
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor; Phyllis Bryan-Mobley, MD; Aiken Regional Medical Center-Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan,)
)
☒ Defendant(s).)
check box above indicating submitting party

CASE NO.
07-CP-32-1981

DEFENDANT DAVID A. STEINER, M.D.'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

Plaintiff's attorney:	Defendant's attorney:
Robert D. Dodson, Esquire Law Offices of Robert Dodson, P.A. 1722 Main Street, Suite 200 Columbia, South Carolina 29201 P: (803) 252-2600 / F: (803) 771-2259 E: RDodson@RDodsonLaw.com	Elloree A. Ganes (SC #70509) HOOD LAW FIRM, LLC 172 Meeting Street; Post Office Box 1508 Charleston, SC 29402 P: (843) 577-1215; F: (843) 722-1630 Email: Info@hoodlaw.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 15 Minutes Court Reporter Needed: YES ☒/ NO ☐

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order –
I hereby move for relief or action by the court as set forth in the attached proposed order.

Anne S. Reid 1-3-13
Signature of Attorney for ☐Plaintiff/☒Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE
CODE: _____ DATE: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED–AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	C/A No. 07-CP-32-1981
Plaintiff,	)	
Versus	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor; Phyllis Bryan-Mobley, MD; Aiken Regional Medical Center-Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan,	)	**DEFENDANT DAVID A. STEINER, M.D.'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
Defendants.	)	

TO: ROBERT D. DODSON, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, the Defendant, David A. Steiner, M.D. (hereinafter "this Defendant"), will move before the Court on the tenth (10th) day after the service hereof or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure dismissing the Defendant from the lawsuit as a matter of law upon the grounds (1) that there is no evidence of any deviations from accepted standards of medical practice on the part of the Defendant that are a proximate cause of the Plaintiff's alleged injuries and damages, (2) that the allegations are barred by the doctrine of lawful authority, (3) that the allegations are barred by the doctrines of good faith, justification, reasonableness and privilege, (4) that the allegations are barred by the doctrine of res judicata, (5) that the allegations are barred by the doctrines of absolute privilege and conditional privilege, (6) that the allegations are barred by the doctrines of absolute and quasi-

judicial immunity, and (7) that the Defendant did not assault and batter the Plaintiff.

The Motion will be based upon the applicable statutory law and case law in South Carolina, upon any Affidavits filed with the Court, upon any pleadings of record, upon any and all depositions, upon any and all discovery and upon such further information as may be received by the Court.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

Robert H. Hood (SC #2599)
Molly H. Craig (SC #6960)
For Elloree A. Ganes (SC #70509)

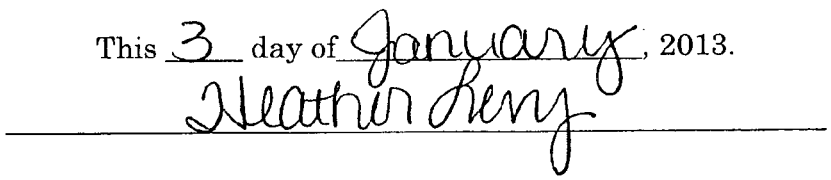
Attorneys for the Defendant
David A. Steiner, MD

January 3, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 3 day of January, 2013.



COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	C/A No. 07-CP-32-1981
Plaintiff,	)	**DEFENDANT DAVID A. STEINER, M.D.'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
Versus	)	
Three Rivers Behavioral Center and Psychiatric Solutions, its successor; Phyllis Bryant-Mobley, MD; Glenn Hooker, MD; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III,	)	
Defendants.	)	

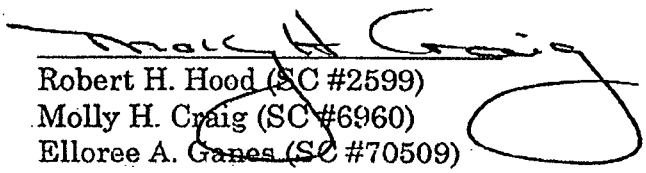
FILED 2008 APR -3 A 9:03

TO: JAN L. WARNER, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, the Defendant, David A. Steiner, M.D. (hereinafter "this Defendant"), hereby move before this Honorable Court at a time and place to be set for an Order entering summary judgment in favor of this Defendant and dismissing the Plaintiff's claims against this Defendant with prejudice in the above captioned case. This Motion is based on the grounds that there is no genuine issue of material fact upon which relief may be granted. Therefore, this Defendant is entitled to judgment as a matter of law.

This Motion is supported by the attached affidavit of Dr. Steiner (Exh. 1), statutory and common law of the state of South Carolina and other applicable authority and may be supported by a memorandum of law and may be supplemented with further memoranda, affidavits, or other supporting material as permitted under the South Carolina Rules of Civil Procedure.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com



Robert H. Hood (SC #2599)
Molly H. Craig (SC #6960)
Elloree A. Ganes (SC #70509)

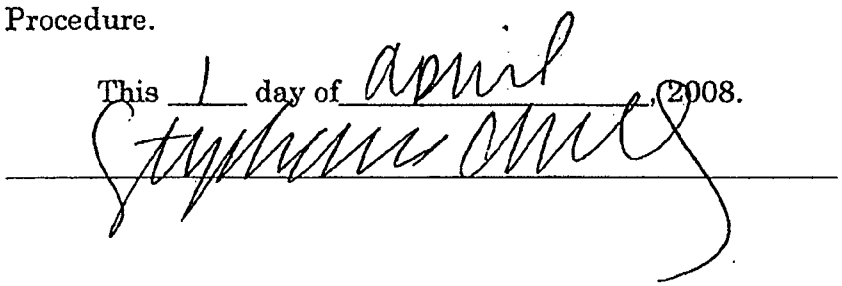
Attorneys for the Defendant
David A. Steiner, MD

April 1, 2008
Charleston, South Carolina
J:\docs\242.044\MSJ.doc

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 1 day of April, 2008.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	A CA No. 07-CP-32-1981
Plaintiff,	)	
Versus	)	**AFFIDAVIT OF DAVID A. STEINER, M.D.**
Three Rivers Behavioral Center and Psychiatric Solutions, its successor; Phyllis Bryant-Mobley, MD; Glenn Hooker, MD; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III,	)	
Defendants.	)	

FILED
CLOCK IN ERROR

PERSONALLY APPEARED BEFORE ME, David A. Steiner, M.D., who after being duly sworn, deposes and says as follows:

1. I am a named Defendant in the above-captioned case now pending in Lexington County and I have personal knowledge of the matters set forth below.

2. I am a citizen and resident of Aiken County, State of South Carolina.

3. I am a physician duly licensed to practice medicine in the State of South Carolina.

4. It is my opinion that I did not at any time deviate from the standard of care in treating the Plaintiff.

ALL-STATE LEGAL
EXHIBIT
1

FURTHER THE AFFIANT SAYETH NOT.

David A. Steiner, M.D.

SWORN TO AND SUBSCRIBED before me
this 27 day of February 2008.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: May 23, 2016
J:\docs\242.044\Affidavit (Steiner).doc

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
Martha Lewis Argoe	)	Civil Action No.: 07-CP-32-1981
	)	
Plaintiff,	)	
	)	**MOTION INFORMATION SHEET**
v.	)	
	)	
Three Rivers Behavioral Health, LLC, et al.	)	
Defendants.	)	

name, S.C. Bar no. and address of plaintiff's attorney	name, S.C. Bar no. and addresses of defendant's attorney
Robert D. Dodson, Esquire Law Offices of Robert Dodson, P.A. 1722 Main Street, Ste. 200 Columbia, SC 29201 Telephone: 803-252-2600 Fax: 803-771-2259 e-mail: rdodson@rdodsonlaw.com other:	Andrew N. Cole, Esquire Colllins & Lacy, PC Post Office Box 12487 Columbia, SC 29211 telephone: (803) 256-2660 fax: (803) 771-4484 e-mail: acole@collinsandlacy.com other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: **Motion for Summary Judgment**

Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion Type

☐ Written motion attached
☐ Form Motion –
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Defendant — Date submitted: Nov. 26, 2012

SECTION III: Motion Fee

☐ PAID – AMOUNT: $25.00
☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or abuse and Neglect
- ☐ Indigent Status
- ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act
- ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication
- ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of court; or reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order
☐ Other:

JUDGE

CODE:_____ Date:_____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	11th JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	CIVIL ACTION NUMBER: 07-CP-32-1981
Plaintiff,	)	
vs.	)	**MOTION FOR SUMMARY JUDGEMENT ON BEHALF OF DEFENDANTS THREE RIVERS BEHAVIORAL HEALTH, LLC, AND DORIS ANN BURRELL, R.N.**
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., Its successor; Phyllis Brant-Mobley, MD; Aiken Regional Medical Center-Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan,	)	
Defendants.	)	

TO: ROBERT DODSON, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

WILL YOU PLEASE TAKE NOTICE, by and through their undersigned attorney, Defendants Three Rivers Behavioral Health, LLC, and Doris Ann Burrell, RN, hereby move before the presiding Judge of the Lexington County Court of Common Pleas within ten (10) days after services hereof, or as soon thereafter as we may be heard, for an Order granting summary judgment pursuant to Rules 12(b)(6) and/or 56 of the South Carolina Rules of Civil Procedure. The basis of this Motion includes the following:

(1) No genuine issue of material fact exists and Defendant is entitled to summary judgment on this claim as a matter of law;

(2) These Defendants are protected by the doctrine of quasi-judicial immunity;

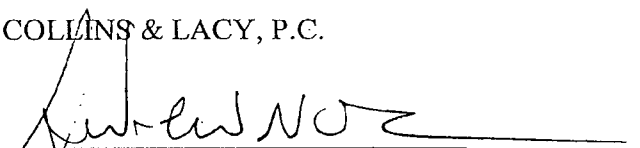
(3) Plaintiff's claims are barred by the doctrines of collateral estoppel and *res judicata*; and

(4) There is no evidence of a breach in the standard of care or proximate cause leading to Plaintiff's alleged medical malpractice injury.

Defendants will rely upon pleadings, affidavits, if any, memorandum of law, relevant case and statutory law, and the argument of counsel to be presented to the Court.

Respectfully submitted,

COLLINS & LACY, P.C.

By: 

Andrew N. Cole, Esquire
1330 Lady Street, Suite 601 (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660
(803) 771-4484 (f)

ATTORNEYS FOR DEFENDANTS
THREE RIVERS BEHAVIORAL
HEALTH, LLC AND DORIS ANN
BURRELL, RN

Columbia, South Carolina

November 26, 2012

CERTIFICATE OF SERVICE

The undersigned employee of Collins & Lacy, P.C., Attorneys at Law, 1330 Lady Street, Sixth Floor, Post Office Box 12487, Columbia, South Carolina, 29211, does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by e-mailing and/or by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Ste. 200
Columbia, SC 29201
Counsel for Plaintiff

James E. Parham, Jr., Esquire
P.O. Box 1576
Irmo, SC 29063
Counsel for Cheryl C. Dodds, MD

George C. Beighley, Esquire
Richardson Plowden Carpenter & Robinson, PA
P.O. Drawer 7788
Columbia, SC 29202
Counsel for Aiken Regional Medical Centers, Inc.

William H. Davidson, II, Esquire
Davidson Morrison & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202
Counsel for Dr. Mobley & Dr. Hooker

Noah M. Hicks II, Esquire
Law Offices of Noah Hicks, II, LLC
P.O. Box 7996
Columbia, SC 29202
Counsel for Carolina Care Plan

Molly Craig, Esquire
The Hood Law Firm
PO Box 1508
Charleston, SC 29402
Counsel for David Steiner

Sterling G. Davies, Esquire
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211
Counsel for Psychiatric Solutions, Inc.

PLEADINGS:

- **MOTION FOR SUMMARY JUDGEMENT ON BEHALF OF DEFENDANTS THREE RIVERS BEHAVIORAL HEALTH, LLC, AND DORIS ANN BURRELL, R.N.**

Richelle Campbell
Columbia, South Carolina

November 26, 2012

R79

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON6)
)
Martha Lewin Argoe,)
☐ Plaintiff)
)
v.)
Three Rivers Behavioral Health, LLC and)
Psychiatric Solutions, Inc., Its Successor; Et. Al.
)
☒ Defendant.)

IN THE COURT OF COMMON PLEAS

COPY

CASE NO.
2007-CP-32-1981

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Robert D. Dodson, Esquire , Bar No. Address: 1722 Main Street, Suite 200 Columbia, South Carolina 29201 phone: 252-2600 fax: 771-2259 e-mail: other:	James E. Parham, Jr., Esquire, Bar No. Address: P.O. Box 1576, Irmo, SC 29063 phone: (803) 749-8555 fax: (803) 749-0277 e-mail:jparham@jparhamlaw.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 15 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — October 1, 2012 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (1/2003)

Noah M. Hicks, II, Esquire
Law Offices of Noah Hicks, II, LLC
Post Office Box 7996
Columbia, South Carolina 29202
708-4842
708-4844 – fax
chicks@nmhlawfirm.com

Sterling G. Davies, Esquire
McAngus Goudelock & Courie, LLC
700 Gervais Street, Suite 300
Post Office Box 12519
Columbia SC 29211-2519
779-2300 – main #
803-748-0526 – fax
sdavies@mgclaw.com

William H. Davidson, II, Esquire
Davidson, Morrison & Lindemann, P.A.
1611 Devonshire Drive, 2nd Flr.
Post Office Box 8568
Columbia, South Carolina 29202-8568
803-806-8222
803-806-8855 – fax
wdavidson@DML-LAW.com

George C. Beighley, Esquire
Richardson, Plowden, Carpenter & Robinson, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
771-4400
779-0016 (Fax)
GBeighley@RichardsonPlowden.com

Elloree Ganes, Esquire
Molly H. Craig, Esquire
Hood Law Firm, LLC
Post Office Box 1508
Charleston, South Carolina 29401
843-577-4435
843-722-1630 – facsimile
Molly.craig@hoodlaw.com

Andrew N. Cole, Esquire
Christopher M. Adams, Esquire
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, South Carolina 29211
acole@collinsandlacy.com

O: 256-2660

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)))	IN THE COURT OF COMMON PLEAS
Martha Lewin Argoe, Plaintiff, vs. Three Rivers Behavioral Health, LLC, and Psychiatric Solutions, Inc., Its Successor, Phyllis Bryant-Mobley, M.D., Aiken Regional Medical Center, David A. Steiner, M.D., Cheryl C. Dodds, M.D., Doris Ann Burrell, R.N., and Carolina Care Plan, Defendants.	)	Civil Action Number: 07-CP-32-1981 MOTION FOR SUMMARY JUDGMENT ON BEHALF OF THE DEFENDANT, CHERYL C. DODDS, M.D.

TO: ROBERT D. DODSON, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendant, Cheryl C. Dodds, M.D., will move before the Court on the tenth (10th) day after the service hereof or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure dismissing the Defendant from the lawsuit as a matter of law upon the grounds (1) that there is no evidence of any deviations from accepted standards of medical practice on the part of the Defendant that are a proximate cause of the Plaintiff's alleged injuries and damages, (2) that the allegations are barred by the doctrine of lawful authority, (3) that the allegations are barred by the doctrines of good faith, justification, reasonableness and privilege, (4) that the allegations are barred by the doctrine of res judicata, (5) that the allegations are barred by the doctrines of absolute privilege and conditional

privilege, (6) that the allegations are barred by the doctrines of absolute and quasi-judicial immunity, and (7) that the Defendant did not assault and batter the Plaintiff.

The Motion will be based upon the applicable statutory law and case law in South Carolina, upon any Affidavits filed with the Court, upon any pleadings of record, upon any and all depositions, upon any and all discovery and upon such further information as may be received by the Court.

James E. Parham, Jr.
Attorney for the Defendant,
Cheryl C. Dodds, M.D.
220 Ministry Drive
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555
(803) 749-0277 (Facsimile)

October 1, 2012

CERTIFICATE OF SERVICE

I, Sherri Johnson, do hereby certify that on the 1st day of October, 2012, I mailed a copy of the foregoing Motion for Summary Judgment on Behalf of the Defendant, Cheryl C. Dodds, M.D., by depositing a copy of the same in the United States Post Office at Columbia, South Carolina, with proper postage affixed addressed to the following:

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201

Shelton Haile, Esquire
Richardson, Plowden & Robinson, P.A.
1600 Marion Street
Post Office Drawer 7788
Columbia, South Carolina 29202

William H. Davidson, II, Esquire
Davidson & Lindemann, P.A.
1611 Devonshire Drive, 2nd Flr.
Post Office Box 8568
Columbia, South Carolina 29202-8568

Elloree Ganes, Esquire
Hood Law Firm, LLC
172 Meeting Street
Post Office Box 1508
Charleston, South Carolina 29402

Noah M. Hicks, II, Esquire
Law Offices of Noah Hicks, II, LLC
Post Office Box 7996
Columbia, South Carolina 29202

Andrew N. Cole, Esquire
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, South Carolina 29211

Sterling G. Davies, Esquire
McAngus Goudelock & Courie, LLC
700 Gervais Street, Suite 300
Post Office Box 12519
Columbia SC 29211-2519

Sherri Johnson

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

FILED

2014 APR -7 P 4:57

BETH A. CARRIGO
CLERK OF COURT
LEXINGTON SC

Martha Lewin Argoe,
☒ Plaintiff

v.

Three River Behavorial Health, LLC, Et Al.
☐ Defendant.

CASE NO.
2007-CP-32-1981

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

COPY

Plaintiff's Attorney:	Defendant's Attorney:
Robert D. Dodson, Bar No. 16205 Address: 1722 Main Street, Suite 200, Columbia, SC 29201 phone: (803) 252-2600 fax: (803) 771-2259 e-mail: rdodson@rdodsonlaw.com other:	, Bar No. Address: phone: fax: e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration as to David Steiner
Estimated Time Needed:30 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒Plaintiff / ☐Defendant — April 7, 2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

FILED
2014 APR 7 PM 5:1
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Martha Lewin Argoe,

Plaintiff,

vs.

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Centers, Inc., David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,

Defendants.

Civil Action No.: 2007-CP-32-1981

PLAINTIFF'S MOTION FOR RECONSIDERATION
(Pertaining to Order Granting Summary Judgment as to David A. Steiner, M.D.)

TO: THE HONORABLE WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE, DEFENDANT, DAVID A. STEINER, MD AND HIS ATTORNEYS:

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff, by and through undersigned counsel moves the Court for an Order(s) altering or amending the Court's previous Order Granting Summary Judgment as to David A. Steiner, MD signed by the Honorable William P. Keesley on or about March 19, 2014. Written notice of the entry of this Order was received by the undersigned attorney on March 27, 2014.

In its Order, this Court granted summary judgment to Defendant, David A. Steiner, concluding:

> there is no evidence that Dr. Steiner was acting outside the ambit of the Probate Court Order during the commitment of the Plaintiff. There were orders issued before and after Dr. Steiner dealt with the Plaintiff. There is also no evidence that would allow the Plaintiff to overcome the quasi-judicial immunity afforded to a physician in these circumstances. There is no expert evidence of a deviation from the standard of care by Dr. Steiner, nor any evidence that any alleged deviation proximately caused recoverable damages to the Plaintiff.

Ms. Argoe, through the undersigned attorney, respectfully requests that the Court reconsider its previous Order and alter and/or amend its previous Order to deny summary judgment to Dr. Steiner.

ARGUMENT

I. Plaintiff presented expert witness testimony that Defendant Steiner breached the standard of care which proximately caused the Plaintiff injuries and damages.

In his deposition and in his sworn Affidavit, Dave Davis, M.D., could not have been more clear that Dr. Steiner did not do a proper assessment on Ms. Argoe and if he had done a proper assessment he could and should have released her from involuntary commitment. When specifically questioned by Steiner's attorney, Dr. Davis testified as follows:

Q: ...tell me all the criticisms that you have of Dr. Steiner related to Ms. Argoe and then I'll ask you my follow up questions.

A: I don't think he did a proper assessment of her to hold her against her will.

(Deposition of Dave Davis, M.D., p. 24, lines 9-14).

When later questioned regarding injuries and damages, Dr. Davis testified as follows:

Q: Sure. And so what is your – do you have any opinion as to any damages that Dr. Steiner caused Ms. Argoe?

A: Yeah, he – he put her into a psychiatric hospital and had her transferred and that's damaging.

(Deposition of Dave Davis, M.D., p. 36, lines 8-12).

With all due respect to this Court, it is simply incorrect to conclude that "There is no expert evidence of a deviation from the standard of care by Dr. Steiner, nor any evidence that any alleged deviation proximately caused recoverable damages to the Plaintiff." This Court should modify its previous order because Dr. Davis' testimony demonstrates that the Court's previous order is incorrect on this point.

The Court writes that: "Dr. Davis, acknowledged on several occasions that he did not complain about the initial detention of Ms. Argoe for up to a couple of days to evaluate her, based on the record." With all due respect to the Court and His Honor, the Court has taken Dr. Davis' testimony out of context. This part of Dr. Davis' testimony was offered in response to questions posed by Defendants Three Rivers and Dodds who first saw Ms. Argoe well after Defendant Steiner saw her. By the time the Three Rivers' physicians and Dodds saw Ms. Argoe, she had already been involuntarily committed for several days. In response to questions from these Defendants' attorneys, Dr. Davis said that he would have given these Defendants a day or two to evaluate Ms. Argoe and review what had become rather voluminous mental health records because of her long incarceration. At no point, however, did Dr. Davis testify that it was proper for Defendant Steiner to hold Ms. Argoe against her will even for a day or two. In Dr. Davis' opinion, it would have been within the standard of care for the Three Rivers physicians and Dodds to hold Ms. Argoe for a day or two because they might need time to review the records that came before their care and treatment. However, Dr. Davis never extended this same time frame to Dr. Steiner because there were few records for Defendant Steiner to review. According to Dr. Davis, what Defendant Steiner should have focused on was his clinical assessment of Ms. Argoe. He failed to do which was a breach in the standard of care according to Dr. Davis.

II. Nothing in the Probate Court proceedings mandated that Defendant Steiner hold Ms. Argoe against her will. Rather, Defendant Steiner made that decision all on his own because of his own incompetent clinical assessment.

In its Order Granting Summary Judgment to David A. Steiner, MD this Court concluded: "The grant of summary judgment is based on the determination that there is no evidence that Dr. Steiner was acting outside the ambit of the Probate Court Order during the commitment of the Plaintiff. There were [probate] court orders issued before and after Dr. Steiner dealt with the

Plaintiff." While it is true that there were probate court orders of involuntary commitment issued before and after Ms. Argoe saw Defendant Steiner, nothing in any of those orders mandated or required that Defendant Steiner hold Ms. Argoe against her will. Instead, Defendant Steiner made that determination all on his own and he made that determination because he did not do a proper clinical assessment and evaluation of Ms. Argoe. On this point, Dr. Davis' testimony is revealing. When questioned by Defendant Steiner's attorney at deposition about the impact of the Probate Court proceedings, Dr. Davis testified as follows:

Q: Okay. Now, you agree with me that Dr. Steiner did not have the ability to release Ms. Argoe at the time that he saw her, correct?

A: He did not?

Q: He did not have or do you have an opinion that he did?

A: I don't know why he couldn't have.

Q: Do you have any knowledge of the commitment proceedings – commitment procedures in South Carolina?

A: Some.

Q: And based on that knowledge, you believe that Mr. Steiner could have released Ms. Argoe at the time that he saw her?

A: I don't understand why not.

Q: If there's a requirement that she be held for a certain period until a hearing is conducted.

A: My understanding is any time you think someone doesn't meet the criteria, you can release them.

(Deposition of Dave Davis, M.D. p. 23 – lines 13-25; p. 24 – lines 1-7). The decision to keep Ms. Argoe was a clinical decision made by Defendant Steiner. Nothing in any of the Probate Court orders required Defendant Steiner to hold Ms. Argoe against her will. He made that decision based on an incomplete, incompetent and sloppy clinical assessment. Respectfully,

it was error for this Court to grant summary judgment to Defendant Steiner when the decision to keep or release Ms. Argoe rested with Defendant Steiner and not the Probate Court.

III. Quasi-judicial immunity does not apply to Defendant Steiner because he was never asked by the judiciary to evaluate Ms. Argoe and he never participated in any Probate Court proceedings.

In its Order Granting Summary Judgment as to David A. Steiner, MD, this Court concluded: "There is also no evidence that would allow the Plaintiff to overcome the quasi-judicial immunity afforded to a physician in these circumstances." Defendant Steiner could not be entitled to quasi judicial immunity because he was never part of the Probate Court's involuntary commitment proceedings. More specifically, Defendant Steiner never testified in court against Ms. Argoe. Defendant Steiner never evaluated Ms. Argoe as a "designated examiner" or at the request of the judiciary. Rather, he was a treating physician and his role was limited to that of a private, treating physician.

In Faile v. S.C. Department of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002) the Supreme Court cautioned that the doctrine of quasi judicial immunity was not absolute. In determining whether the doctrine applies, the Court must determine whether the act complained of was judicial in nature. Nothing in Defendant Steiner's acts was judicial in nature and his encounter with Ms. Argoe was in a purely private, clinical setting as a treating physician. Respectfully, there is simply no way the doctrine of quasi judicial immunity can apply to Defendant Steiner and Ms. Argoe asks this Court to reconsider its previous Order on this point.

IV. The Doctrine of Res Judicata does not bar Ms. Argoe's claim against Defendant Steiner.

In its Order Granting Summary Judgment as to David A. Steiner, MD, this Court wrote: "In the court's view, the elements of *res judicata* are satisfied in this medical malpractice case."

Plaintiff respectfully requests that this Court reconsider this ruling because the elements necessary for application of *res judicata* are not satisfied.

In Judy v. Judy, the Supreme Court explained the fundamental purpose behind the doctrine of *res judicata*: "Res Judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence which was the subject of a prior action between those parties." 393 S.C. 160, 172 712 S.E.2d 408, 414 (2011) (citations omitted) (emphasis added). The practical effect of *res judicata* and its "fundamental purpose" is "to ensure that no one should be sued twice for the same cause of action." Yelsen Landco v. State, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012) (citations omitted).

To provide guidance in the application of the doctrine of *res judicata*, the appellate courts have held that a Defendant must prove three (3) elements to invoke the doctrine of *res judicata*. First, a Defendant must prove that the identity of the parties is the same. Second, the Defendant must prove that the subject matter of the underlying lawsuit is the same. Finally, a Defendant must prove that the issues were actually adjudicated in the first suit. Nelson v. QHG of South Carolina, Inc., 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct App 2003) (citations omitted). In this case, Defendant Steiner satisfied none of these three (3) elements.

The first element necessary for application of *res judicata* is not present in this case. This Court relied on the Supreme Court's rulings in Argoe I and Argoe II to conclude that the application of *res judicata* was appropriate. However, in those cases Defendant Steiner was not a party to that appeal and did not participate in either of those appeals. While he may have been listed in the caption to those cases before the Supreme Court, that was the extent of his involvement.

Additionally, the subject matter of those appeals was different than the subject matter now before this Court. Argoe I involved a claim for legal malpractice and breach of fiduciary duty against an attorney. Argoe II involved three (3) causes of action against Psychiatric Solutions (who was previously dismissed from this case) for false imprisonment, defamation and intentional infliction of emotional distress. The second element necessary for application of the doctrine of *res judicata* is simply not satisfied.

Ms. Argoe's claims for medical malpractice against Defendant Steiner has never been adjudicated. In fact, Ms. Argoe only amended her complaint to reflect a medical malpractice cause of action after the Supreme Court's rulings in Argoe I and Argoe II. The Supreme Court could not have possibly adjudicated her claims for medical malpractice because her claims of medical malpractice were not before the Supreme Court. Because the doctrine of *res judicata* requires a court or tribunal to actually adjudicate a litigant's claims and because Ms. Argoe's claims against Defendant Steiner have never been adjudicated, the doctrine of *res judicata* cannot be applied to Ms. Argoe's claim against Defendant Steiner.

Just as importantly, the rationale or reason for the doctrine of *res judicata* is not satisfied in this case. As the Supreme Court recently articulated in Yelsen Landco, the "fundamental purpose" of *res judicata* is "to ensure that no one should be sued twice for the same cause of action." In this case, Defendant Steiner has never been sued twice for medical malpractice or any other causes of action by Ms. Argoe. Ms. Argoe's claims against Defendant Steiner were stayed pending appeal of her other claims against other Defendants in Argoe I and Argoe II. To put the issue in its simplest terms: This is Ms. Argoe's first bite at the apple as it pertains to Defendant Steiner. She has not sought to sue him twice. Rather, she seeks her day in court against him for the first time.

CONCLUSION

For the foregoing reasons, Ms. Argoe moves the Court for an Order modifying and amending its previous Order of March 19, 2014 and allowing her to proceed with her medical malpractice claims against Defendant Steiner.

Respectfully submitted,

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: 803.252.2600
Facsimile: 803.771.2259

April 7, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

FILED

COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2014 APR -7 P 4: 57

Martha Lewin Argoe,)

BETHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiff,) Civil Action No.: 2007-CP-32-1981

vs.)

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center, Inc., David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,)

Defendants.)

CERTIFICATE OF SERVICE

I, Tasha L. Smith, paralegal to the Law Office of Robert Dodson, PA, do hereby certify that I have caused the foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION (Pertaining to Order Granting Summary Judgment as to David A. Steiner, M.D.)** to be served upon the following parties at the following addresses via United States Postal Service, Postage Pre-Paid, and electronic mail:

The Honorable William P. Keesley
S.C. Circuit Court
PO Box 10
Edgefield, SC 29824

Andrew N. Cole, Esquire
Christopher M. Adams, Esquire
Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Will Davidson, Esquire
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PO Box 8568
Columbia, SC 29202

Elloree Gaines, Esquire
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

James E. Parham, Jr., Esquire
James E. Parham, Jr., P.A.
P.O. Box 1576
Irmo, SC 29063

Tasha L. Smith, Paralegal

April 7, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

2014 APR 7 P 4: 58

BETH A. CARRIGO
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

COPY

Martha Lewin Argoe,
☒ Plaintiff

v.

Three River Behavorial Health, LLC, Et Al.
☐ Defendant.

CASE NO.
2007-CP-32-1981

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Robert D. Dodson, Bar No. 16205 Address: 1722 Main Street, Suite 200, Columbia, SC 29201 phone: (803) 252-2600 fax: (803) 771-2259 e-mail: rdodson@rdodsonlaw.com other:	, Bar No. Address: phone: fax: e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration as to Doris Ann Burrell, RN
Estimated Time Needed:30 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒Plaintiff / ☐Defendant — April 7, 2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

FILED
2014 APR -7 PM 4:58
BETH A. CARRIGO
CLERK OF COURT
LEXINGTON CO

Martha Lewin Argoe,

Plaintiff,

vs.

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Centers, Inc., David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,

Defendants.

Civil Action No.: 2007-CP-32-1981

PLAINTIFF'S MOTION FOR RECONSIDERATION
(Pertaining to Order Granding [sic] Summary in favor of Defendant Doris Ann Burrell, RN)

TO: THE HONORABLE WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE, DEFENDANT, DORIS ANN BURRELL AND HER ATTORNEY:

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff, by and through undersigned counsel moves the Court for an Order(s) altering or amending the Court's previous Order Granding [sic] Summary Judgment in favor of Defendant Doris Ann Burrell, RN signed by the Honorable William P. Keesley on or about March 19, 2014. Written notice of the entry of this Order was received by the undersigned attorney on March 27, 2014.

In its Order, this Court granted summary judgment to Defendant, Doris Ann Burrell, concluding:

> At all relevant times, Nurse Burrell was working within the bounds of the involuntary commitment order issued by the Probate Court. She was specifically appointed as the second, non-physician designated examiner by the Probate Court...

Ms. Argoe, through the undersigned attorney, respectfully requests that the Court reconsider its previous order and alter and/or amend its previous Order to deny summary judgment to Defendant Burrell.

ARGUMENT

I. Defendant Burrell is not entitled to quasi-judicial immunity because she did not even attempt to perform the duties assigned to her by the Probate Court.

In its Order, this Court correctly noted that Nurse Burrell was a designated examiner appointed by the Probate Court. As such, she had a duty to evaluate Ms. Argoe and determine two (2) things: (1) Whether Ms. Argoe was suffering from a mental illness and (2) If so, whether that mental illness made Ms. Argoe a danger to herself and others. The problem for Defendant Burrell is that she didn't even attempt to fulfill these duties. Had she at least attempted to fulfill her duties as a designated examiner, she might have a plausible argument for quasi judicial immunity. But according to Defendant Burrell's own testimony, she didn't do what she was assigned to do by the Probate Court.

On this point, Defendant Burrell's testimony was both stunning and revealing. According to Defendant Burrell: "I'm only a nurse [and] can follow doctor's orders." Deposition of Doris Ann Burrell, R.N. p. 37, lines 18-19. The problem is, Defendant Burrell's duties as a designated examiner not to merely "follow doctor's orders". Rather, they were to determine if Ms. Argoe was suffering from a mental illness and whether she posed a danger to herself or others because of that mental illness. In her Designated Examiner report, Defendant Burrell stated that Ms. Argoe "is mentally ill" and that "[t]here is a likelihood of serious harm to self or others." But what she said to the Probate Court is not what she testified to at deposition. In fact, what she testified to at deposition is completely contrary to what she reported to the Probate Court.

At deposition, Defendant Burrell's testimony was clear: Ms. Argoe did not present with signs of a mental illness and she did not pose a danger to herself or others.

Q: During your actual interaction with Ms. Argoe, what symptoms did you witness her exhibiting of a mental illness?

A: As we were speaking there was none except, you know, the denial, and you've already pointed that out, that denial, anybody can deny it. So no, she was not exhibiting any aspect right at that time,

Deposition of Doris Ann Burrell, R.N., p. 51, lines 1-8.

Q: Okay. So that list of things that we just – you just gave me, you didn't get any of that information directly from Ms. Argoe, did you?

A: No.

Q: You didn't get any of that information – where did you get that information from?

A: From the commit paper. I did not ask her. And from the doctor's assessment.

Deposition of Doris Ann Burrell, R.N., p. 44, lines 20-25; p. 45, lines 1-2.

Q: Okay. And so my question is, based on your designated examiner duties, what did you see that she displayed which made her a danger to herself?

A: At the time I did this, there was nothing going on.

Q: At the time you did your interview there was nothing going on—

A: Right.

Deposition of Doris Ann Burrell, R.N., p. 42, lines 18-25; p. 42, line 1.

Q: And you didn't believe at that time that she was a danger to herself or other people?

A: That's what – yes.

Deposition of Doris Ann Burrell, R.N., p. 36, lines 8-10.

Defendant Burrell's testimony contradicts the information she provided to the Probate Court in the "Report of Designated Examiner for Mental Illness". When all of her testimony is

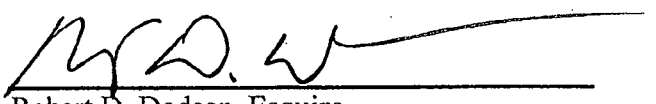
considered, it is clear that Defendant Burrell simply went along with the crowd – she simply "followed doctor's orders". When the doctors and family concluded Ms. Argoe was a danger to herself and others because of mental illness, Defendant Burrell went along with the crowd even though she testified that she didn't believe Ms. Argoe was a danger to herself or others because of a mental illness. The problem for Defendant Burrell is that the Probate Court's directive was for Defendant Burrell to present her own conclusions to the Court. Defendant Burrell failed to do this, instead opting to merely go along with what she was told by others. However, that was not what she was directed to do by the Probate Court.

Defendant Burrell seeks summary judgment based on quasi judicial immunity for a judicial function which she admits she did not perform. Respectfully, this Court should not reward a Defendant who fails to follow a Court directive, a directive that was put in place to prevent the unwarranted involuntary commitment of patients like Ms. Argoe, by granting that Defendant summary judgment.

CONCLUSION

For the foregoing reasons, Ms. Argoe moves the Court for an Order modifying and amending its previous Order of March 19, 2014 and allowing her to proceed with her medical malpractice claims against Defendant Burrell.

Respectfully submitted,



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Telephone: 803.252.2600
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April 7, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

FILED

2014 APR -7 P 4: 58

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON CO

Martha Lewin Argoe,	)	
	)	Civil Action No.: 2007-CP-32-1981
vs.	)	
	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center, Inc., David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,	)	**CERTIFICATE OF SERVICE**
Defendants.	)	

I, Tasha L. Smith, paralegal to the Law Office of Robert Dodson, PA, do hereby certify that I have caused the foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION (Pertaining to Order Granding [sic] Summary in favor of Defendant Doris Ann Burrell, RN)** to be served upon the following parties at the following addresses via United States Postal Service, Postage Pre-Paid, and electronic mail:

The Honorable William P. Keesley
S.C. Circuit Court
PO Box 10
Edgefield, SC 29824

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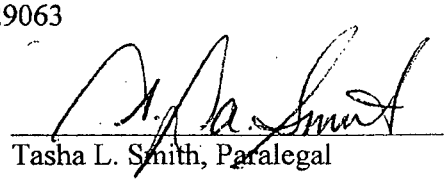
Christopher M. Adams, Esquire
Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Will Davidson, Esquire
1611 Devonshire Drive, 2nd Floor
PO Box 8568
Columbia, SC 29202

Elloree Gaines, Esquire
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

James E. Parham, Jr., Esquire
James E. Parham, Jr., P.A.
P.O. Box 1576
Irmo, SC 29063



Tasha L. Smith, Paralegal

April 7, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

FILED
2014 MAR 24 P 12:56
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Martha Lewin Argoe,)
☒ Plaintiff)

CASE NO.
2007-CP-32-1981

v.)

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Three River Behavorial Health, LLC, Et Al.)
☐ Defendant.)

COPY

Plaintiff's Attorney:	Defendant's Attorney:
Robert D. Dodson, Bar No. 16205 Address: 1722 Main Street, Suite 200, Columbia, SC 29201 phone: (803) 252-2600 fax: (803) 771-2259 e-mail: rdodson@rdodsonlaw.com other:	, Bar No. Address: phone: fax: e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration
Estimated Time Needed:30 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒Plaintiff / ☐Defendant — March 20, 2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

FILED

2014 MAR 24 PM 12:56

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON CO

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
Martha Lewin Argoe, *Plaintiff,*	)	Civil Action No.: 2007-CP-32-1981
vs.	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Centers, Inc., David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan, *Defendants.*	)	**PLAINTIFF'S MOTION FOR RECONSIDERATION**

TO: THE HONORABLE WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE, DEFENDANTS THREE RIVERS BEHAVIORAL HEALTH, LLC, PHYLLIS BRYAN MOBLEY, MD, CHERYL C. DODDS, MD AND THEIR ATTORNEYS:

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff, by and through undersigned counsel moves the Court for an Order(s) altering or amending the Court's previous Order signed by the Honorable William P. Keesley on or about March 6, 2014. Written notice of the entry of this Order was received by the undersigned attorney on March 11, 2014.

In its Order, this Court granted partial summary judgment to Defendants, Three Rivers, Bryan-Mobley and Dodds based on the legal doctrines of *res judicata* and absolute quasi judicial immunity. Ms. Argoe, through the undersigned attorney, respectfully requests that the Court reconsider its previous order and alter and/or amend its previous Order to deny summary judgment to these Defendants because application of these doctrines should not preclude Ms. Argoe from pursuing her medical malpractice claims against these Defendants.

I. Application of the Doctrine of Res Judicata should not bar Ms. Argoe's claim for Medical Malpractice Against these Defendants because the elements necessary to invoke the doctrine of Res Judicata do not apply.

In its Order, this Court wrote: "In this court's view, the elements of *res judicata* are satisfied in this medical malpractice case." Plaintiff respectfully requests that this Court reconsider this ruling because the elements necessary for application of *res judicata* are not satisfied.

In Judy v. Judy, the Supreme Court explained the fundamental purpose behind the doctrine of *res judicata*: "Res Judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence which was the subject of a prior action between those parties." 393 S.C. 160, 172 712 S.E.2d 408, 414 (2011) (citations omitted) (emphasis added). The practical effect of *res judicata* and its "fundamental purpose" is "to ensure that no one should be sued twice for the same cause of action." Yelsen Landco v. State, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012) (citations omitted).

To provide guidance in the application of the doctrine of *res judicata*, the appellate courts have held that a Defendant must prove three (3) elements to invoke the doctrine of *res judicata*. First, a Defendant must prove that the identity of the parties is the same. Second, the Defendant must prove that the subject matter of the underlying lawsuit is the same. Finally, a Defendant must prove that the issues were actually adjudicated in the first suit. Nelson v. QHG of South Carolina, Inc., 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct App 2003) (citations omitted). In this case, Defendants Three Rivers, Bryan-Mobley and Dodds satisfied none of these three (3) elements.

The first element necessary for application of *res judicata* is not present in this case. This Court relied on the Supreme Court's rulings in Argoe I and Argoe II to conclude that the

application of *res judicata* was appropriate. However, in those cases Defendants Three Rivers, Bryan-Mobley and Dodds were not parties to that appeal and did not participate in either of those appeals. While they may have been listed in the caption to those cases before the Supreme Court, that was the extent of their involvement.

Additionally, the subject matter of those appeals was different than the subject matter now before this Court. Argoe I involved a claim for legal malpractice and breach of fiduciary duty against an attorney. Argoe II involved three (3) causes of action Psychiatric Solutions (who was previously dismissed from this case) for false imprisonment, defamation and intentional infliction of emotional distress. The second element necessary for application of the doctrine of *res judicata* is simply not satisfied.

Ms. Argoe's claims for medical malpractice against Three Rivers, Bryan-Mobley and Dodds have never been adjudicated. In fact, Ms. Argoe only amended her complaint to reflect a medical malpractice cause of action after the Supreme Court's rulings in Argoe I and Argoe II. The Supreme Court could not have possibly adjudicated her claims for medical malpractice because her claims of medical malpractice were not before the Supreme Court. Because the doctrine of *res judicata* requires a court or tribunal to actually adjudicate a litigants claims and because Ms. Argoe's claims against Three-Rivers, Bryan-Mobley and Dodds have never been adjudicated, the doctrine of *res judicata* cannot be applied to Ms. Argoe's claim.

Just as importantly, the rationale or reason for the doctrine of *res judicata* is not satisfied in this case. As the Supreme Court recently articulated in Yelsen Landco the "fundamental purpose" of *res judicata* is "to ensure that no one should be sued twice for the same cause of action." In this case, Defendants Three-Rivers, Bryan-Mobley and Dodds have never been sued twice for medical malpractice or any other causes of action by Ms. Argoe. Ms. Argoe's claims

against these Defendants were stayed pending appeal of her other claims against other Defendants in Argoe I and Argoe II. To put the issue in its simplest terms: This is Ms. Argoe's first bite at the apple as it pertains to Defendants Three-Rivers, Bryan-Mobley and Dodds. She has not sought to sue them twice. Rather, she seeks her day in court against these Defendants for the first time.

II. The doctrine of absolute quasi judicial immunity does bar Ms. Argoe's claims against Defendants Three-Rivers, Bryan-Mobley and Dodds because each of these Defendants was free to discharge her from involuntary commitment without any court or judicial intervention.

In its Order, this Court wrote: "It is the ruling of this court that Three Rivers, Dr. Bryant-Mobley and Dr. Dodds are entitled to partial summary judgment for any acts or omissions that were within the scope of judicial directives in an involuntary commitment proceeding." The Court went on to write that "Ms. Argoe is precluded from recovering for an alleged misdiagnosis of mental illness by these Defendants from June 22, 2005, to Ms. Argoe's discharge on July 20, 2005." In effect, this Court has ruled that Ms. Argoe may not pursue her claims for misdiagnosis of a mental illness and the subsequent involuntary commitment that was the proximate result of the misdiagnosis.

With all due respect to this Court and His Honor, such a ruling is flawed because it ignores the fact that the diagnosis and treatment of a mental illness (treatment that included involuntary commitment and detention and the use of powerful medications) was a clinical, medical decision made by Defendants Three-Rivers, Bryan-Mobley and Dodds. In making these decisions, none of these Defendants needed any further court intervention, supervision, oversight or the like in treating and releasing Ms. Argoe. Once the Probate Court issued its order of involuntary commitment, these Defendants had no further obligation to the Probate Court in freeing and releasing Ms. Argoe. They were not operating as any branch of the judiciary.

Rather, they were private physicians exercising medical judgment (in this care poor, unsound and incompetent medical judgment). Even one of the Defendant's own experts fully acknowledged that after the Probate Court issued its Order of involuntary commitment, the decision as to when to release and free Ms. Argoe was not a matter for the Court or a matter that required any Court intervention or approval. Rather, it was a clinical, medical decision made by Defendants Three-Rivers, Bryan-Mobley and Dodds.

Q: Why is it that Dr. Dodds was able to discharge Ms. Argoe on her own?

A: Well, she had already been committed. Once you have the civil commitment proceedings, and if the person is retained by the probate judge, after that point, the authority is given to the doctor to release whenever. And so, yes, a lot of my discharges are exactly that circumstance. The person has been seen by probate, they were retained until the hospital and the staff determined the patient was safe to be at large.

Q: Is it fair to say that once the probate court has issued an order of involuntary commitment, that the treating physician has the authority to discharge that patient when medically appropriate.

A: That's correct.

Q: You do not have to go back to the probate court for an order before that?

A: Not at all. .....

(Deposition of Donna Marie Schwartz-Watts, M.D., p 21, line 25; p. 22, lines 1-17).

Later in Deposition, Dr. Watts testified:

Q: Now, after a patient goes through the probate hearing on involuntary commitment and the judge issues an order of involuntary commitment, is it up to the treating physician, then, to determine when to discharge the patient from involuntary commitment, unless there's something specific in the judge's order?

A: Yes, sir.

Q: And is that a clinical medical decision that the physician makes?

A: Yes. And sometimes a social worker will play a part. There are sometimes when the clinician – I have few cases right now where the person's better, but there's

nowhere for them to go. And so, sometimes it becomes a social work issue, as well, for placement. But yes, it's usually ---

Q: So, just as a surgeon would make a decision about when it's appropriate to discharge somebody from the hospital after surgery, a psychiatrist would make a decision medically about when it's okay to discharge a patient from involuntary commitment after the probate process?

A: Sure.

Q: And you don't need a judge for that?

A: No.

Q: You don't need to go back to court for that?

A: No.

Q: That was not done in Ms. Argoe's case?

A: That's correct, not that I saw.

Mr. Cole: Object to form.

Q: Dr. Dodds made the decision about when to discharge her, correct?

A: Based on the records that I've seen, yes.

Q: And at any point, Dr. Dodds could have made that decision when she became involved in her care and treatment, couldn't she?

A: Sure.

Q: And after the probate hearing, you would agree with me that Dr. Mobley could have also discharged her?

A: Had she wanted to, sure. Sure. She was still there, I think, for a few days after the probate hearing.

(Deposition of Donna Marie Schwartz-Watts, M.D., p 69, line 25; p. 70, lines 1-25; p. 71, lines 1-15).

Defendants cannot credibly claim judicial and quasi-judicial immunity when one of their own experts testified that the decision to discharge Ms. Argoe was a medical decision outside of

the probate court/involuntary commitment legal proceedings.[1] Ms. Argoe should be allowed to pursue claims against these three (3) Defendants when the clinical, medical decisions they made were poor, unsound and incompetent.

Furthermore, and with all due respect to this Court and His Honor, the Court's ruling that Dodds is entitled to summary judgment based on the doctrine of quasi-judicial immunity is unsupported by the facts in this case because Dodds never played any role in the Probate Court hearing or involuntary commitment proceedings. Dodds voluntarily took over the care and treatment of Ms. Argoe and she was paid to do so. But she was never even a part of the involuntary commitment proceedings, was never a court appointed examiner, etc. There is no factual basis to treat Dodds as acting as a wing or part of the judiciary because that was never her role at any point in this case. As this Court correctly noted in its Order: "A medical professional or medical facility is not entitled to blanket immunity for acts of malpractice simply because the patient came to be treated as a result of involuntary commitment proceedings." Yet, as it pertains to Dodds, that is exactly the effect of this Court's Order: to give "blanket immunity" to Dodds even though Dodds never played any role in the involuntary commitment proceedings.

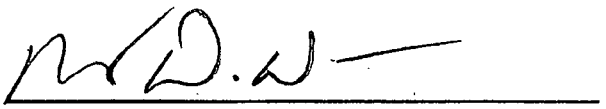
CONCLUSION

For the foregoing reasons, Ms. Argoe moves the Court for Order modifying and amending its previous Order of March 6, 2014 and allowing her to proceed with her medical malpractice claims against Defendants Three-Rivers, Bryan-Mobley and Dodds.

---

[1] Plaintiff's expert testified repeatedly at deposition that in his opinion at any point during her stay at Three Rivers' Dr. Mobley and Dr. Dodds could and should have discharged Ms. Argoe. His opinion was and is that nothing in the probate court process dictated the standard of care to the physicians.

Respectfully submitted,



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March 20, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

FILED

2014 MAR 24 P 12: 56

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Martha Lewin Argoe,)

Plaintiff,) Civil Action No.: 2007-CP-32-1981

vs.)

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center, Inc., David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,)

Defendants.)

CERTIFICATE OF SERVICE

I, Tasha L. Smith, paralegal to the Law Office of Robert Dodson, PA, do hereby certify that I have caused the foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION** to be served upon the following parties at the following addresses via United States Postal Service, Postage Pre-Paid, and electronic mail:

The Honorable William P. Keesley
S.C. Circuit Court
PO Box 10
Edgefield, SC 29824

Andrew N. Cole, Esquire
Christopher M. Adams, Esquire
Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Will Davidson, Esquire
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Elloree Gaines, Esquire
Hood Law Firm, LLC
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James E. Parham, Jr., Esquire
James E. Parham, Jr., P.A.
P.O. Box 1576
Irmo, SC 29063

Tasha L. Smith, Paralegal

March 20, 2014
Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
Martha Lewin Argoe,)
☒ Plaintiff)
)
v.)
)
Three River Behavorial Health, LLC, Et Al.)
☐ Defendant.)

IN THE COURT OF COMMON PLEAS

FILED

CASE NO.
2007-CP-32-1981

2011 SEP 13 P 4: 30

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

SHEETA. CARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiff's Attorney:	Defendant's Attorney:
Robert D. Dodson, Bar No. 16205 Address: 1722 Main Street, Suite 200, Columbia, SC 29201 phone: (803) 252-2600 fax: (803) 771-2259 e-mail: rdodson@rdodsonlaw.com other:	, Bar No. Address: phone: fax: e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Substitute Counsel
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒Plaintiff / ☐Defendant — September 8, 2011 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

COPY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

FILED
2011 SEP 13 P 4: 30
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Martha Lewin Argoe,

Plaintiff,

vs.

Three Rivers Behavioral Health, LLC, and Psychiatric Solutions, Inc., Its Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III,

Defendants.

Docket No.: 2007-CP-32-1981

MOTION TO SUBSTITUTE COUNSEL

With the knowledge and consent of the Plaintiff, Martha Lewin Argoe, the below signed attorneys respectfully move the Court for an Order substituting Robert D. Dodson as attorney for the Plaintiff and relieving Charles M. Black, Jr., his law firm, Warner, Payne & Black, L.L.P., and the firm's attorneys as Counsel.

I CONSENT AND SO MOVE:

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, STE 200
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Telephone: (803) 252-2600
Facsimile: (803) 771-2259
Email: rdodson@rdodsonlaw.com
Attorney for Plaintiff

I CONSENT AND SO MOVE:

Charles M. Black, Jr.
Warner, Payne & Black, L.L.P.
ElderLaw Services of South Carolina, P.A.
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Post Office Box 2628
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Telephone: (803) 799-0554
Facsimile: (803) 799-2517
charlesblack@elderlaw-sc.com

September 9, 2011
Columbia, South Carolina

ROD

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	CIVIL ACTION NO.: 2007-CP-32-1981
Martha Lewin Argoe,	)	
Plaintiff,	)	
v.	)	**CERTIFICATE OF SERVICE**
Three Rivers Behavioral Health, LLC, and Psychiatric Solutions, Inc., Its Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III,	)	
Defendants.	)	

FILED
2011 SEP 13 P 4: 30
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

I, Brandi Newman, employee of the Law Offices of Robert Dodson, P.A. do hereby certify that on September 12, 2011, I caused to be served a true, correct and accurate copy of **Plaintiff's Motion to Substitute Counsel** by depositing in United States Mail, postage prepaid, addressed to:

Attorney for Psychiatric Solutions:
Sterling G. Davies, Esquire
McAngus Goudelock & Courie, LLC
PO Box 12519
Columbia, SC 29211-2519

Attorney for Doris Ann Burrell and Three Rivers:
Andrew N. Cole, Esquire
Christopher M. Adams, Esquire
Collins & Lacy, P.C.
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Attorney for Dr. Mobley and Dr. Hooker:
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PO Box 8568
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Attorney for Carolina Care Plan:
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Attorney for David Steiner:
Molly Craig, Esquire
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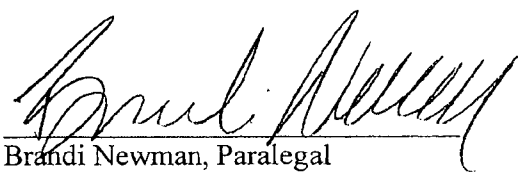
PO Box 728
Greenville, SC 29602-0728

G. Dewey Oxner, Jr., Esquire
Haynsworth Sinkley Boyd, PA
PO Box 2048
Greenville, SC 29602



Brandi Newman, Paralegal

10·31·11

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Martha Lewis Argoe, Plaintiff, vs. Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., Its Successor; Phyllis Bryant-Mobley, MD; Glenn Hooker M.D.; Aiken Regional Medical Ceneter, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N., Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III, Defendant.	)	IN THE COURT OF COMMON PLEAS _____ JUDICIAL CIRCUIT CASE NO.: 2007_-CP-32_1981 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney: Robert D. Dodson, Bar No. 16205 Address: 1722 Main Street, Suite 200 Columbia, SC 29201 Phone: 803-252-2600Fax 803-771-2259 E-mail: rdodson@rdodsonlaw.comOther: _____	Defendant's Attorney: SEE ATTACHED LIST, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to File Second Amended Complaint
Estimated Time Needed: 45 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant — Date submitted: 10/31/11

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____

☐ Other: _____	Date: _____
CLERK'S VERIFICATION Collected by:_____ Date Filed: _____ ☐ MOTION FEE COLLECTED: $ _____ ☐ CONTESTED – AMOUNT DUE: $ _____	

SCCA 233 (11/2003)

Attorney for Psychiatric Solutions:
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Attorney for Dr. Mobley and Dr. Hooker:
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Attorney for Carolina Care Plan:
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Haynsworth Sinkley Boyd, PA
PO Box 2048
Greenville, SC 29602

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Martha Lewin Argoe,	)	Docket No.: 2007-CP-32-1981
	)	
Plaintiff,	)	
	)	
vs.	)	**MOTION TO FILE SECOND AMENDED COMPLAINT**
	)	
Three Rivers Behavioral Health, LLC, and Psychiatric Solutions, Inc., Its Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III,	)	
	)	
Defendants.	)	
	)	

TO DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, hereby moves the Court for an Order allowing her to file a Second Amended Complaint. The basis for this Motion is set forth below.

This case has a long and complicated history. Plaintiff was married to Defendant, G. Lewis Argoe, Jr. for several years. In her Complaint and First Amended Complaint she alleges G. Lewis Argoe took steps to have her involuntarily committed for psychiatric medical treatment in an unlawful effort to gain control over a considerable amount of money and assets she had acquired through her life. She also filed suit against Mr. Argoe's attorney, James F. Walsh and her son, Geroge L. Argoe, III, for their role in the Plaintiff's involuntary commitment. The remaining Defendants are all medical providers who played various roles in Ms. Argoe's involuntary commitment. In the Complaint, First Amended Complaint and proposed Second

Amended Complaint, Plaintiff alleges she was not mentally ill or in need of involuntary commitment because she was not a danger to herself or other people and Defendants knew or reasonably should have known this.

In her original pleadings filed with the Court, Plaintiff alleged sixteen causes of action against the various Defendants. In addition to this action, Plaintiff had other cases pending in other courts. Plaintiff's claims against G. Lewis Argoe and George L. Argoe, III were settled. In addition, the Court granted summary judgment to James F. Walsh. The Court also granted summary judgment to some of the remaining Defendants on some of the causes of action against them. The Plaintiff appealed portions of those Orders granting summary judgment to some of the Defendants on some causes of action but the Supreme Court affirmed this Court's order granting summary judgment to some defendants on some causes of action. During the appeals process this case was stayed.

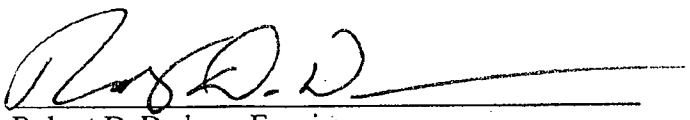
After the Supreme Court remanded the case for proceedings consistent with its opinions, this Court held a status conference with the parties on September 23, 2011. At the status conference and as reflected in an "Order Concerning Status" Plaintiff's Counsel drafted a proposed Second Amended Complaint in order to clarify the issues to be litigated. Pursuant to the Order Concerning Status, Plaintiff's Counsel circulated the proposed Second Amended Complaint to all counsel of record. Some Defendants have objected to the proposed Second Amended Complaint.

Pursuant to the Court's Order Concerning Status, Rule 15 of the South Carolina Rules of Civil Procedure and other applicable rules, case law or other legal authority, Plaintiff moves the Court for an Order allowing her to file the Second Amended Complaint. A true and correct copy

of the proposed Second Amended Complaint is attached to this Motion as Exhibit A and is expressly made a part of this Motion.

As indicated above, prior to filing this Motion, Plaintiff's Counsel communicated with Defense Counsel in a good faith attempt to resolve the issues outlined in this Motion.

Respectfully submitted,



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Email: rdodson@rdodsonlaw.com
Attorney for Plaintiff

October 31, 2011
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT

Martha Lewin Argoe, *Plaintiff,* vs. Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan, *Defendants.*	)	Civil Action No.: 2007-CP-32-1981 **SECOND AMENDED COMPLAINT** **(Jury Trial Demanded)**

Plaintiff, by and through undersigned counsel, would show unto the Court as follows:

NATURE OF CASE

1. This is a medical negligence case arising from a forced inpatient psychiatric evaluation which began on or about June 7, 2005. In addition, Plaintiff has asserted causes of action for assault and battery related to psychiatric medications she was forced to take but which were not medically necessary or medically warranted. In addition, Plaintiff has asserted causes of action against Carolina Care Plan because of that party's role in the Plaintiff's forced inpatient hospitalization.

PARTIES/JURISDICTION & VENUE

2. Upon information and belief, Defendant, Three Rivers Behavioral Health, LLC (hereinafter "Three Rivers") is a psychiatric inpatient facility located in Lexington County, South Carolina.

3. Upon information and belief, Three Rivers is now owned by Defendant, Psychiatric Solutions, Inc.
4. Upon information and belief, Psychiatric Solutions, Inc., is a corporation organized and existing under the laws of the state of South Carolina.
5. Upon information and belief, Defendant, Phyllis Bryan-Mobley, MD, is a resident of the state of South Carolina.
6. Upon information and belief, Defendant, Glenn Hooker, MD, is a resident of the state of South Carolina.
7. Upon information and belief, Defendant, Aiken Regional Medical Center-Aurora Pavilion (hereinafter "Aurora Pavilion"), is a corporation organized and existing under the laws of the state of South Carolina.
8. Upon information and belief, Defendant, David A. Steiner, MD, is a resident of the state of South Carolina.
9. Upon information and belief, Defendant, Cheryl C. Dodds, MD, is a resident of the state of South Carolina.
10. Upon information and belief, Defendant, Doris Ann Burrell, is a resident of the state of South Carolina.
11. Upon information and belief, Defendant, Carolina Care Plan, is a corporation organized and existing under the laws of a state other than South Carolina but which is authorized to do business and in fact does business within the state of South Carolina.
12. The majority of acts which give rise to this Complaint took place in Lexington County, South Carolina.

13. Upon information and belief, this Court has jurisdiction over the parties and subject matter and venue is properly asserted in Lexington County, South Carolina.

FACTUAL ALLEGATIONS

14. On or about June 6, 2005, Plaintiff's former husband (and her husband at the time) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court.

15. At that time, Plaintiff was not a danger to herself or other people.

16. Plaintiff's former husband filed the Application as part of a plan and scheme to have the Plaintiff committed to an inpatient psychiatric facility so that he would eventually be able to have access to her money, bank accounts and other material assets and could convert those things for his own use and benefit.

17. In the Application for Involuntary Emergency Hospitalization, Plaintiff's former husband made a number of material misrepresentations related to the Plaintiff's condition and behavior.

18. Based upon the material misrepresentations in the Application for Involuntary Emergency Hospitalization, the Probate Court issued an Order of Detention pursuant to SC Code Ann. § 44-17-40.

19. In relevant part, the Probate Court's order provided that:

> *"an officer of the peace take the person alleged to be mentally ill into custody for a period not to exceed 24 hours, during which detention, said person shall be examined by a licensed physician."*

20. On or about June 7, 2005, the Orangeburg County Sheriff's Department detained the Plaintiff pursuant to the Probate Court's Order and committed her to the care and custody at the Regional Medical Center of Orangeburg.

21. Pursuant to the Probate Court's Order, Plaintiff was evaluated by Defendant, Glenn Hooker, MD.

22. While Defendant Hooker saw the Plaintiff, he never performed an adequate psychiatric evaluation to determine if the Plaintiff should be involuntarily committed because she was a danger to herself or others.

23. Instead, Defendant Hooker referred the Plaintiff for a CT scan to the brain, which was negative.

24. Had Defendant Hooker performed an adequate and medically competent evaluation, he would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

25. Thereafter, that same day, Plaintiff was released from the Orangeburg Regional Medical Center and allowed to return home.

26. The following day, June 8, 2005, Defendant Hooker completed the necessary paperwork to have the Plaintiff involuntarily committed for inpatient psychiatric hospitalization and treatment, even though he had never performed an adequate or medically competent evaluation of the Plaintiff as was required by the Probate Court's Order and was dictated by the standard of care for psychiatrists.

27. That same day, June 8, 2005, Sheriff's deputies took the Plaintiff into custody and transported her to Defendant, Aurora Pavilion.

28. Upon admission at Aurora Pavilion, Plaintiff was initially seen and evaluated by Defendant, David A. Steiner, MD.

29. Defendant Steiner did not perform an adequate or competent assessment of the Plaintiff and had Defendant Steiner performed an adequate and competent examination, he would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

30. Because of Hooker and Steiner's inadequate, incomplete and incompetent evaluations of the Plaintiff, the Plaintiff was subjected to involuntary inpatient psychiatric hospitalization at Aurora that was not medically necessary or medically warranted.

31. As part of this involuntary inpatient psychiatric hospitalization, Plaintiff was given a full body search and strip search which was humiliating to her and would have been humiliating to any reasonable person under like or similar circumstances.

32. Around this same time, June 8, 2005, Defendant, Carolina Care Plan, assigned a medical manager and other medical professionals to Plaintiff's case because her medical bills during the involuntary commitment were being paid by Carolina Care Plan.

33. At that time, it was determined that she did not have benefits to stay at Aurora Pavilion and therefore plans were made to transfer her to another psychiatric facility for involuntary inpatient treatment.

34. The following day, June 9, 2005, Plaintiff was transferred and admitted to Defendant, Three Rivers.

35. At that time, she was seen and evaluated by Phyllis Bryan-Mobley, MD but Defendant Bryan-Mobley did an incomplete and incompetent evaluation of the Plaintiff and based upon Bryan-Mobley's incomplete and incompetent evaluation of the Plaintiff, the

Plaintiff remained involuntarily committed, despite the fact that she was not a danger to herself or other people.

36. Had Defendant Bryan-Mobley performed an adequate and medically competent evaluation, she would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

37. On or about June 10, 2005, Defendant Bryan-Mobley and Defendant Doris Ann Burrell were appointed by the Probate Court as examiners for the Plaintiff to determine if she was a danger to herself or others.

38. On or about June 21, 2005, the Probate Court conducted a hearing to determine whether the Plaintiff should continue to be involuntarily committed.

39. At the time of this hearing, and prior to the hearing, Defendants Bryan-Mobley and Burrell had never conducted adequate, complete or competent examinations of the Plaintiff to determine whether she was truly a danger to herself or other people.

40. Based upon their incomplete and incompetent examinations, which were grossly outside the standard of care for reasonable psychiatrists, psychiatric nurses, and other psychiatric professionals, these individuals indicated the Plaintiff was a danger to herself and was a danger to other people, even though they had not performed reasonable, complete, adequate and competent evaluations in order to allow them to make this determination.

41. Had these Defendants conducted proper, complete and competent examinations of Plaintiff, they would have easily determined the Plaintiff was not a danger to herself or other people and should not be subjected to involuntary commitment.

42. In fact, and by way of example only, during her involuntary commitment, the Plaintiff was given a personal assessment inventory by Leslie C. Morey, Ph.D. Dr. Morey

concluded that the Plaintiff was entirely within normal limits and there was no indication of significant psycho-pathology.

43. Nonetheless, Bryan-Mobley and Burrell simply ignored and disregarded such testing as well as a host of other evidence and instead based their diagnoses, in whole or in part, upon what was being told to them by the Plaintiff's now ex-husband and son who had ulterior motives for financial gain in keeping the Plaintiff involuntarily committed.

44. Because of the incomplete and incompetent examinations of the Plaintiff by the physicians described above and based upon the incomplete and incompetent reports these physicians produced without adequately and completely examining the Plaintiff, the Probate Court issued an order for continued hospitalization and involuntary commitment of the Plaintiff, even though reasonably prudent and reasonably diligent psychiatrists, psychiatric nurses and other psychiatric professionals would have easily determined that the Plaintiff was not a danger to herself or other people and was therefore not in need of inpatient psychiatric hospitalization.

45. Moreover, Defendants Bryan-Mobley and Burrell failed to undertake reasonable and necessary steps to verify the accuracy (or in this case, the inaccuracy) of the information being conveyed to them by Plaintiff's now ex-husband and her son.

46. Had these Defendants undertaken such reasonable and necessary steps they would have discovered that the information being conveyed to them by the Plaintiff's now ex-husband and her son was false, misleading and that the Plaintiff was neither a danger to herself or to others.

47. Thereafter and as a direct and proximate result of the inadequate, incomplete, and incompetent examination of Bryan-Mobley and Burrell the Probate Court issued an order for the mandatory and involuntary hospitalization of the Plaintiff.

48. On or about June 27, 2005, Defendant, Cheryl C. Dodds saw and evaluated the Plaintiff.

49. At that time, Defendant Dodds noted that the Plaintiff was not suicidal or homicidal, i.e., she did not pose a danger to herself or others but nonetheless, Dodds and the other Defendants named herein continued with a course of treatment which included involuntarily hospitalization and the use of mind-altering medications, neither of which were medically necessary or warranted and thus were outside the standard of care.

50. On or about June 28, 2005 the Plaintiff's medical benefits were exhausted through Carolina Care Plan.

51. Nonetheless, Carolina Care Plan continued to pay for her inpatient involuntary commitment even though it knew or reasonably should have known that such commitment was not medically necessary or medically warranted based on the incomplete and incompetent evaluations of the above named physicians and health care providers.

52. Moreover, and upon information and belief, Defendant Carolina Care Plan had professional nurses and doctors reviewing Plaintiff's medical records and any reasonable review of these medical records would have revealed and should have revealed to CCP that the Plaintiff's involuntary commitment was not medically justified, medically warranted or medically necessary.

53. However because CCP failed to adequately review the incomplete and incompetent evaluations of the above described physicians, it continued to pay for benefits thereby allowing Plaintiff's involuntary commitment to continue.

54. Upon information and belief, had CCP stopped paying for benefits because the benefits were not medically necessary or medically warranted, the above described physicians would have lost any monetary incentive that they had to continue to detain the Plaintiff and treat the Plaintiff for conditions for which no treatment was necessary because the conditions simply did not exist.

55. Over the course of the next three (3) weeks, the Plaintiff continued to remain involuntarily committed against her will.

56. During the majority of her involuntary commitment, Plaintiff was forcibly medicated with a variety of mind-altering drugs, none of which were medically necessary or warranted but which in fact caused pain and sickness to the Plaintiff.

57. On or about July 20, 2005, Plaintiff was finally discharged from Three Rivers.

FOR A FIRST CAUSE OF ACTION AGAINST ALL NAMED DEFENDANTS MEDICAL NEGLIGENCE

58. Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.

59. Defendants owed Plaintiff a duty of reasonable and due care and specifically had a duty to use a degree of skill and care as reasonably prudent psychiatrists and/or other psychiatric professionals would use in examining and treating the Plaintiff.

60. Moreover, CCP had a duty to adequately and competently review medical records it obtained and only pay for medical treatment that was reasonable and necessary.

61. Defendants, individually and/or by and through their agents, employees, servants, representatives, and/or partners, breached their duties in one or more of the following particulars:

a. In failing to properly, completely and thoroughly evaluate the Plaintiff to determine if she was a danger to herself or others;

b. In continuing to commit the Plaintiff for involuntary inpatient psychiatric treatment when the Plaintiff was neither a threat to herself or others and her medical condition did not warrant such forced, involuntary, inpatient treatment;

c. In failing to timely and appropriately recognize that the Plaintiff was not a threat to herself or others and did not need to be involuntarily committed;

d. In failing to reasonably investigate the allegations that were made against the Plaintiff by her now ex-husband and son regarding her condition;

e. In failing to conduct a reasonable and prudent examination as reasonable and prudent psychiatrists, psychiatric nurses and psychiatric medical professionals would under like or similar circumstances;

f. In failing to appropriately treat and care for the Plaintiff;

g. In failing to recognize and diagnose that the Plaintiff was not a threat to herself or others;

h. In paying for medical care and treatment that was neither reasonable nor necessary and thereby creating a monetary incentive to the healthcare providers to continue to detain Plaintiff for inpatient psychiatric hospitalization; and,

i. In such additional particulars as may be learned through discovery and/or proven at trial.

62. As a direct and proximate result of Defendants' negligent, grossly negligent, wanton, and/or reckless conduct as described more fully above, Plaintiff suffered injuries and damages which included but are not necessarily limited to an extended period of involuntary commitment and hospitalization against her will, the administration of drugs and medications against her will, mental anguish and anxiety as a result of her involuntary commitment, lost wages and such other actual, special and/or consequential damages as may be proven at trial.

63. Plaintiff hereby demands judgment against the above named Defendants and seeks damages for all actual, consequential and/or special damages plus an appropriate amount of punitive damages (as determined by a jury).

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS THREE RIVERS, HOOKER, AURORA PAVILLION, STEINER, BRYAN-MOBLEY, DODDS AND BURRELL ASSAULT

64. Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.

65. Plaintiff was placed in reasonable fear of bodily harm by the conduct of the above named Defendants and/or their agents and servants by the forcible administration of psychiatric drugs and medications which were not medically reasonable, medically warranted or medically necessary.

66. As a direct and proximate result of these Defendants' assault upon the Plaintiff by their attempts to force her to take psychiatric medications that were not medically reasonable, medically warranted or medically necessary, the Plaintiff feared for her health and safety and suffered such other damages as may be proven at trial.

67. Plaintiff hereby demands judgment against the above named Defendants for their assault upon her and seeks all actual, consequential and/or special damages plus punitive damages in an appropriate amount (as determined by a jury).

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS THREE RIVERS, HOOKER, AURORA PAVILION, STEINER, BRYAN-MOBLEY, DODDS AND BURRELL BATTERY

68. Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.

69. The above named Defendants individually and/or through their agents, employees, and/or servants forcibly required Plaintiff to take psychiatric medications and drugs that were not medically reasonable, were not medically warranted, and were not medically necessary.

70. As a direct and proximate result, Plaintiff was sick from these medications and suffered other injuries.

71. Plaintiff hereby demands judgment against the above named Defendants for their battery upon the Plaintiff by forcing her to take unnecessary and unwarranted psychiatric medications and seeks all damages allowed by law including but not necessarily limited to all actual, consequential, and/or special damages plus punitive damages in an appropriate amount (as determined by a jury).

WHEREFORE, Plaintiff prays that the Court find for the Plaintiff and against the Defendants (jointly and severally) and that Plaintiff be awarded all damages allowed by law including but not necessarily limited to actual damages, consequential damages, special damages and punitive damages in an appropriate amount (as determined by a jury), that the Defendants be taxed with the cost of this action and that the court award such additional and further relief, in law or equity, that the Court deems just and proper.

LAW OFFICES OF ROBERT DODSON, P.A.

_____

Robert D. Dodson, Esquire
Law Offices of Robert Dodson, P.A.
1722 Main Street, Suite 200
Columbia, South Carolina 29201
Telephone: 803-252-2600
Facsimile: 803-771-2259
Email: rdodson@rdodsonlaw.com

This ____ Day of November, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CIVIL ACTION NO.: 2007-CP-32-1981
Martha Lewin Argoe,	)	
	)	
Plaintiff,	)	
	)	**CERTIFICATE OF SERVICE**
v.	)	
	)	
Three Rivers Behavioral Health, LLC, and Psychiatric Solutions, Inc., Its Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III,	)	
	)	
Defendants.	)	

I, Lindsay H. Valek, employee of the Law Offices of Robert Dodson, P.A. do hereby certify that on September 12, 2011, I caused to be served a true, correct and accurate copy of **Plaintiff's Motion to File Second Amended Complaint** by depositing in United States Mail, postage prepaid, addressed to:

Attorney for Psychiatric Solutions:
Sterling G. Davies, Esquire
McAngus Goudelock & Courie, LLC
PO Box 12519
Columbia, SC 29211-2519

Attorney for Doris Ann Burrell and Three Rivers:
Andrew N. Cole, Esquire
Christopher M. Adams, Esquire
Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Attorney for Dr. Mobley and Dr. Hooker:
Will Davidson, Esquire
1611 Devonshire Drive, 2nd Floor
PO Box 8568
Columbia, SC 29202

Attorney for Carolina Care Plan:
Noah M. Hicks, II, Esquire
Law Offices of Noah Hicks, II, LLc
PO Box 7996
Columbia, SC 29202

Attorney for David Steiner:
Molly Craig, Esquire
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

Attorney for James Walsh:
K. Michael Barfield, Esquire
PO Drawer H
Charleston, SC 29402-0197

Attorney for Aiken Regional Medical Center:
George C. Beighley, Esquire
PO Drawer 7788
Columbia, SC 29202

Michael S. Pauley, Esquire
Lide and Pauley, LLC
PO Box 2189
Lexington, SC 29072-9155

Attorney for Cheryl C. Dodds, M.D.:
Jim Parham, Esquire
PO Box 1576
Columbia, SC 29063

G. Dewey Oxner, Jr., Esquire
Haynsworth Sinkley Boyd, PA
PO Box 2048
Greenville, SC 29602

Lindsay H. Valek, Paralegal

This 21st Day of October, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	COMMITMENT DIVISION
COUNTY OF DORCHESTER)	(Ref: CASE NUMBER: 2007-GC-18-00009)
)	
IN THE MATTER OF)	**PETITION TO VACATE COMMITMENT**
Martha L. Argoe)	**BASED UPON LACK OF SUBJECT**
)	**MATTER JURISDICTION**

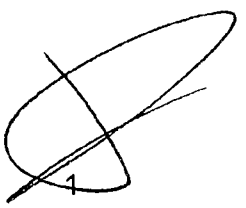
Martha L. Argoe, by way of Petition to this Court, alleges:

1. Martha L. Argoe previously made application to this Court to void two (2) Guardianships and two (2) Conservatorships that arose in Orangeburg County, South Carolina with regard to which this Court issued its Order dated January 18, 2007 (Docket Number 2006-GC-18-00045) **(Exhibit 1)**.

2. During the course of that hearing, this Court reviewed the records of Mrs. Argoe's commitment and made the determination that "*proper procedure was followed through each step of the involuntary commitment and that no grounds exist to challenge the previous Order of the Orangeburg County Probate Court with regards to that commitment.*" **(See, Exhibit 1, Page 1)**

3. Since that time, through discovery, Mrs. Argoe secured additional records reflecting that no valid Order of Detention was in effect at the time she was committed to the Aurora Pavilion on June 8, 2005 and was subsequently transported to Three Rivers on June 9, 2005. Based upon the following, no subject matter existed to proceed with the commitment.

4. The only Order of Detention under which Martha L. Argoe was taken into custody at any time was issued by The Honorable Pandora Jones-Glover on June 6, 2005. **(Exhibit 2)**



5. This Order of Detention was presumably issued based upon Application for Involuntary Emergency Hospitalization for Mental Illness – PART 1 dated June 6, 2005 **(Exhibit 3)** and the Certificate of Licensed Physician Examination for Emergency Admission – PART II **(Exhibit 4)** signed by G. Hooker, M.D. which, in this Court's file, is undated. However, Mrs. Argoe assumes Exhibit 4 was submitted to the Probate Court prior to the issuance of Judge Glover's June 6, 2005 Order as, if not, there was no physician's certificate upon which to issue said Order.

6. Pursuant to the June 6, 2005 Order of Detention, Mrs. Argoe was taken into custody by an Orangeburg County Deputy and transported to Orangeburg Regional Medical Center on **June 7, 2005 at 4:34 p.m**. for a "mental evaluation" **(Exhibit 5)**. According to Exhibit 5, there was no evidence of acute intracranial abnormality, and Mrs. Argoe was taken home by the deputy and released.

7. However, on June 8, 2005, Mrs. Argoe was taken into custody a second time pursuant to the **same June 6, 2005 Order of Detention**. On June 8, 2005, she was detained, taken into custody, and transported to Aiken Regional (Aurora Pavilion) **(Exhibit 6)**.

8. In Judge Lawson's commitment file, the same document certified by Dr. Hooker upon which the Order of Detention is based **(See, Exhibit 5)**, now bears the date of **June 8, 2005 at 3:00 p.m.**, obviously not in Dr. Hooker's handwriting **(Exhibit 7)**.

9. Therefore, the **same June 6, 2005 Order of Detention** was used to take Martha L. Argoe into custody twice: First, on June 7, 2005 when she was taken to

Orangeburg Regional Medical Center and then released, and Second, on June 8, 2005 when she was taken to Aurora Pavilion.

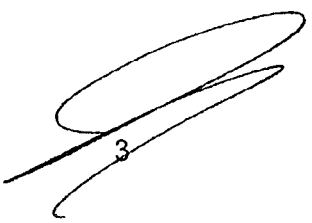
10. The June 6, 2005 Order of Detention specifically states that it is issued "...provided the individual taken into custody shall have the right to representation by an attorney. If within the twenty-four (24) hours the person in custody is not examined by a licensed physician, or if upon examination, the physician does not execute the certification provided for in Section 44-17-410(2), the individual in custody shall be immediately released."

S.C. Code Ann. §44-17-430 provides:

> "If within the twenty-four hours the person in custody is not examined by a licensed physician or, if upon examination the physician does not execute the certification provided for in Section 44-17-410(2), **the proceedings must be terminated** and the individual in custody must be released immediately." (Emphasis Added)

11. Here, Mrs. Argoe was originally taken into custody on June 7, 2005 by an Orangeburg County Sheriff's Deputy who transported her to Orangeburg Regional Medical Center for a "mental evaluation" where she was subsequently referred by Dr. Ronald Hargrave for a CT scan.

12. The results of the CT scan showed "no evidence of acute intracranial abnormality." **(See, Exhibit 5)** Importantly, no certification was signed by any physician within twenty-four (24) hours after Martha L. Argoe was detained on June 7, 2005 and taken into custody as required by S.C. Code Ann. §44-17-430. Mrs. Argoe was released by the Orangeburg County Sheriff's Deputy and returned home after being detained. Therefore, by statute, the proceedings "must" have been terminated and no longer existed.



13. However, when Mrs. Argoe was subsequently detained and taken into custody on June 8, 2005 and then transported to Aurora Pavilion (and, on June 9, 2005, taken to Three Rivers by deputies using the **same June 6, 2005 Order**), there was no valid proceeding under which Mrs. Argoe could have been lawfully detained.

14. Based upon the foregoing, Martha L. Argoe was not detained under a valid Order of Detention, but was being held against her will in a proceeding which, by statute, had ended. Therefore, all acts taken under the expired June 6, 2005 Order of Detention were void and invalid after Mrs. Argoe was examined at Orangeburg Regional Medical Center and then released on June 7, 2005.

15. Based upon the foregoing, all actions taken after Martha L. Argoe was released from Orangeburg Regional Medical Center on June 7, 2005 were without subject matter jurisdiction as there was no pending action.

16. Therefore, this Court must vacate all Orders and purported proceedings taken after June 7, 2005, and must also vacate the pertinent portions of this Court's Order dated January 18, 2007 as set forth above due to lack of subject matter jurisdiction **(See, Exhibit 1)**.

WHEREFORE, Martha L. Argoe requests that the foregoing relief be granted.

WARNER, PAYNE, & BLACK, L.L.P.

Jan L. Warner
Matthew E. Steinmetz
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ATTORNEY FOR MARTHA L. ARGOE

Columbia, South Carolina
March 25, 2008

EXHIBIT 1

PROBATE JUDGE
DORCHESTER COUNTY
2007 JAN 18 PM 1:29

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF DORCHESTER) CASE NUMBER 2006-GC-18-00-045
)
IN THE MATTER OF)
Martha L. Argoe)
) ORDER

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W P & S. INC.
LEGAL SERVICES
OF SC, PA

BE IT REMEMBERED THAT THIS MATTER CAME BEFORE THIS COURT by and through a motion to compel. The Petitioner in that motion is Mr. Argoe with James Walsh, Jr. as his counsel.

The court denies the motion to compel the involuntary commitment records of Martha L. Argoe due to the fact that the information contained therein is protected by S.C. Probate Code §44-23-1100. After consideration of the exceptions provided by S.C. Probate Code §44-22-100, and a through and confidential review of the file, there is nothing contained therein that the Petitioner cannot obtain through other means including examination of documents already in their possession. The fact that the designated examiners who were treating the client during her admission were appointed by the court as a result of the Petition to Appoint a Guardian/Conservator, and filed information identical to and more in depth than what is contained in the involuntary commitment file makes the motion to compel moot.

By agreement of the parties, the court further reviewed the involuntary commitment file for determination of facts necessary to proceed with a future motion to vacate as filed with this court on September 29, 2006 by Mr. Jan Warner, attorney for Mrs. Argoe. The review was to determine whether or not there were any violations of Mrs. Argoe's rights under S.C. Probate Code §44-17-430, S.C. Probate Code §44-17-410(3), S.C. Probate Code §44-17-570, or S.C. Probate Code §44-17-420 as cited in the Motion to Vacate. The court's review found that proper procedure was followed through each step of the involuntary commitment and that no grounds exist to challenge the previous Order of the Orangeburg County Probate Court with regards to that commitment. Issues surrounding the use of the designated examiners in the Guardianship/Conservatorship proceedings

as a ground for a Motion to Vacate were not addressed at this time.

During the course of the hearing and with consent of the parties, the court also made a determination as to the status of the Conservatorship and Guardianship files. The status of each file is as follows:

The Conservatorship:

James Walsh, Jr., attorney for George Argoe, Jr. (husband of the protected person), filed the Summons and Petition for appointment of Conservator on June 7, 2005. The Petition requested that George Argoe, III(son of the protected person), be appointed conservator for Martha Argoe. On that same date, George Argoe III accepted Service of the Petition and James Jackson, Jr., was appointed the GAL for Martha Argoe in this matter. On July 8, 2005 Cheryl Dobbs and Phyllis Mobley, members of her treatment team at Three Rivers were appointed designated examiners in this matter. There is a question as to whether or not the selection of the examiners who were treating her during her commitment presents a conflict of interest under S.C. Probate Code §62-5-407(b).

On August 1, 2005, a letter was sent to attorney Walsh and James Jackson notifying them that a hearing was scheduled for September 28, 2005. At the request of the moving party, the hearing was terminated and an Order for Dismissal was signed by Judge Jones-Glover on February 9, 2006.

On April 12, 2006 a second Summons and Petition was filed by attorney Walsh on behalf of the husband, Mr. Argoe Jr., asking that the son, George Argoe, III, be appointed temporary conservator and that a protective order be issued for Mrs. Argoe. The court again requested two designated examiners to examine and report to the court on Mrs. Argoe's current condition. James Elmore and Charles Reamy were appointed as designated examiners from the Coastal Empire CMHC to examine Mrs. Argoe on March 30, 2006. Again, there is a possible conflict of interest in that these designated examiners were from the outpatient facility responsible for her current care.

On May 31, 2006, pursuant to S.C. Probate Code §62-5-408, Orangeburg County appointed George L. Argoe III as temporary conservator with restrictions including termination of this appointment after 45 days without a full hearing. At this time, no hearing was held, no notice was given, and no report from the designated examiners was received as they are not required for an emergency proceeding. The temporary Conservatorship expired 45 days later and a full hearing, including Mrs. Argoe was never scheduled.

The Guardianship:

James Walsh, Jr., attorney for George Argoe, Jr., also filed a Summons and Petition on July 11, 2005 requesting the court appoint George Argoe, III to be appointed as Guardian for his mother, Martha Argoe. Designated examiners and a GAL were already in place due to the Petition for Conservatorship (see above).

Orangeburg County appointed a temporary guardian, George Argoe, III on July 19, 2005 for the purpose of making certain medical decisions for Martha Argoe. The temporary guardian's appointment was to be terminated 45 days from the date of appointment. This appointment was issued on an emergency basis and was to be reviewed in 30 days pursuant to S.C. Probate Code §62-5-310(d).

On August 1, 2005, Orangeburg County Probate Court notified James F. Walsh and James B. Jackson that a hearing was scheduled for September 28, 2005 and for parties to file proof of service of Summons, Petitions and Notices of hearing. S.C. Probate Code §62-1-401.

On September 1, 2005, husband's attorney (Walsh) requested that the hearing be continued due to Mrs. Argoe's improved mental status. A note was attached requesting the court to hold the matter open for six months from the original appointment.

On January 23, 2006, six months from the original appointment, the file was closed and an Order was signed by Judge Jones-Glover which terminated the appointment of guardian due to the time expiring. Copies of this Order were sent to George Argoe, Jr., George Argoe III, and Attorney Walsh.

PROBATE JUDGE
DORCHESTER COUNTY

2007 JAN 18 PM 1:29

THEREFORE IT IS the Order of this Court that

The Motion to Compel be dismissed due to the fact that the information within has been deemed moot.

While Judge Jones-Glover had statutory authority in appointing a temporary Guardian and Conservator, once those appointments expired and no further action was taken, they were dismissed and/or administratively closed by the court.

There was no improper release of information from Mrs. Argoe's commitment file by her attorney or another court. The information obtained by the adverse party was a result of the appointment of her treatment team to serve as a designated examiner in a separate action seeking to have her declared incompetent. Whether or not this is a violation of Mrs. Argoe's rights or a violation of S.C. Probate Code §62-5-407(b) is not a matter before this court.

As of January 10, 2007, this court holds that any previous petitions for appointment of either Guardian or Conservator in this file are considered void and of no legal significance due to the fact that a full hearing on the issues, with notice to Mrs. Argoe and an opportunity for her to present her own evidence was never presented. Further actions to declare her incompetent will need to proceed with a new petition filed in this court.

IT IS SO ORDERED.

CERTIFIED TRUE COPY
Robin Waggoner
Robin Waggoner
Administrative Assistant
Dorchester Co. Probate Court

January 18, 2007
St. George, SC

T. Provence
Tiffany Provence, Judge of Probate

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE PROBATE COURT

Bewgue 3:10 6-6-05

EX PARTE:

G. LEWIS ARGOE, JR.
(Applicant)

ORDER OF DETENTION

IN THE MATTER OF:

MARTHA L. ARGOE
(Alleged to be Mentally Ill)

Upon reading the affidavit of G. Lewis Argoe, Jr. (Name of Deponent) dated the 6th day of June, 20 05, it is **ORDERED, ADJUDGED, AND DECREED:**

Pursuant to the provisions of Section 44-17-430, S.C. Code, 1976, as amended:

That any officer of the peace take the person alleged to be mentally ill into custody for a period of not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician.

GIVEN under my Hand and Seal of the Probate Court of Orangeburg County this 6th day of June, 20 05.

Pandora Jones-Stever
Judge of Probate

NOTE: TO OFFICER OF THE PEACE TAKING PERSON INTO CUSTODY:

"... Provided the individual taken into custody shall have the right to representation by an attorney. If within the twenty-four (24) hours the person in custody is not examined by a licensed physician, or if upon examination, the physician does not execute the certification provided for in Section 44-17-410(2), ... the individual in custody shall be immediately released." Section 44-17-430, S.C. Code, 1976, as amended.

SCDMH FORM
JAN 69 (REV. JUNE 91) M-136 (CG 12/99)
MH-FCC-1

EXHIBIT 3

APPLICATION FOR INVOLUNTARY EMERGENCY HOSPITALIZATION FOR MENTAL ILLNESS

FOR HOSPITAL USE ONLY	
Date Admitted 6-9-05	
Hospital Register No. 1018795	
Approval of Hospital Official	
Signature	Date 6/10/05

(Complete in Triplicate)
STATE OF SOUTH CAROLINA)
COUNTY OF Orangeburg)

IN THE MATTER OF:

Person alleged to be mentally ill	Sex	Birthdate	Age	Race	Marital Status
Martha L. Argoe	F		62	W	Married

Street Address	City	State	Zip	Phone #	Length of Time Residing There
1155 Putter Path	Orangeburg	S.C.	29115	(803) 568-2111	Since 1983

TO THE HOSPITAL DIRECTOR:

Application is hereby made for the INVOLUNTARY EMERGENCY ADMISSION of the above-named person to a SCDMH Psychiatric Hospital

or to _____
NAME OF NON-SCDMH HOSPITAL

for the following reasons:

That the undersigned believes that the above-named person is mentally ill, and because of this mental condition is likely to cause serious harm to self or others if not immediately hospitalized.

1. The specific type of serious harm thought probable is: ** Martha carries a handgun on her left hip all the time. Martha is a danger to herself and others. She is suspicious of others and as a result has moved silverware and other items out of the house. She refuses to touch or clean anything in the house. She locks herself in the room at night. She is fidgety and drives late at night
2. That the applicant bases his/her belief on the following grounds: Martha is fearful of people, she is paranoid. She stated that her house is bugged. She has hallucinations of seeing witches and warlocks. She spends monies excessibly she accuses her husband of having an affair and of having another family. Clothes are stacked everywhere.
3. That the applicant understands that for Involuntary Emergency Admission to occur that the said person must be examined and certified by at least one licensed physician (Part II, Certificate of Licensed Physician for Mental Illness) as required by Section 44-17-410, S.C. Code, 1976, as amended. If the said person has not been examined, listed below are the reasons: Martha refuses treatment.

4. That next-of-kin of allegedly mental ill person is G. Lewis Argoe
Name
Relation Husband Whose address is 1155 Putter Path, Orangeburg, SC 29115 803-568-2111
RFD or Street City and State Zip Phone Number

In case of next-of-kin cannot be contacted, notify George Argoe
Son 7 Glen Court, Greer, SC 29650 (864) 901-4600
Relation Address City and State Zip Phone Number

SWORN to before me this 6th day of June, 2005
Nancy H Jowles
Notary Public for South Carolina or Probate Judge
My Commission Expires: 07/07/2008

WHEREFORE, the undersigned requests that the person named above be admitted to a psychiatric hospital for treatment as authorized by law.

x G. Lewis Argoe
Applicant's Signature
G. Lewis Argoe Jr.
Name of Applicant (typed or printed)
1155 Putter Path Orangeburg, S.C.
Address of Applicant
Business 803-568-2111 Cell- 803-575-485
Telephone Number of Applicant
Spouse
Relation to Patient or Title, if any

(See reverse side which must be completed)

SCDMH FORM
APR. 89 (REV. DEC. 99) M-130 pp. 1 of 2 (CG 12/99)

APPLICATION FOR INVOLUNTARY EMERGENCY HOSPITALIZATION FOR MENTAL ILLNESS

IMPORTANT NOTICE: All patients receiving treatment in a State Department of Mental Health facility will be charged the established fee as approved by the South Carolina Mental Health Commission.

PERTINENT FINANCIAL RESPONSIBILITY INFORMATION

Present Name		Full Name at Birth if Different From Present	
Martha Argoe		Martha Lewin	
Education Level	Social Security Number	Occupation	Monthly Income
14		Housewife	
Employer's Name	Address	If not employed, source of income: Retirement $ Public Assistance $ Other $	
N/A			

HOSPITALIZATION INSURANCE Coverage including group insurance, Medicare, Medicaid, military medical care, etc.

Policy No. or HIR	Name of Insurance Co.	Address	If group insurance, name & address of firm
	Carolina Care Plan	Columbia	V-96
			1-800-877-6003

MILITARY SERVICE

Branch	Service Number	Dates of Service	Type Discharge	Monthly Pension	VA Claim No.
N/A					

FINANCIAL REPRESENTATIVE Please list the name, address and telephone numbers of the person to receive financial statements and other media related to the personal financial affairs on behalf of the patient

Last Name	First Name	Middle Initial	Relation to Patient	Street Address or Rural Route & Box	Telephone
Argoe,	Martha		Self	455 Putter Path	(803) 568-2111
				City, State, Zip: Orangeburg, SC 29115	Telephone

LIST OF SCDMH PSYCHIATRIC HOSPITALS

G. Werber Bryan Psychiatric Hospital 220 Faison Drive Columbia, S.C. 29203 For information and prior to all admissions call: (803) 935-7143 - All Hours	South Carolina State Hospital 2100 Bull Street (P.O. Box 119) Columbia, S.C. 29202 For information and prior to all admissions call: (803) 898-2038 - All Hours	William S. Hall Psychiatric Institute 1800 Colonial Drive (P.O. Box 202) Columbia, S.C. 29202
Patrick B. Harris Psychiatric Hospital P.O. Box 2907 Anderson, S.C. 29622 For information and prior to all admissions call: (864) 231-2600 - All Hours	ICF / MR 7901 Farrow Road Columbia, S.C. 29203 For information and prior to all admissions call: (803) 935-6334 or (803) 898-2038 - All Hours	Psychiatry Unit Forensic Unit Children's Unit For information and prior to all admissions call: (803) 898-1862 - All Hours

NOTE: ADMINISTRATIVE PROCEDURE - FORMS:
"Application for Emergency Admission, Part I", and "Certificate of Licensed Physician, Part II", must be completed in triplicate and accompany the patient to the receiving hospital. The hospital must forward one copy to Judge of Probate of the county in accordance with 44-17-410(3) and retain one copy in the person's hospital record. ADMISSION MUST BE WITHIN SEVENTY-TWO HOURS OF THE DATE OF THE CERTIFICATION OF THE LICENSED PHYSICIAN. (PART II).

NOTE: TO LICENSED PHYSICIAN:
1. The licensed physician must consult with the local State Community Mental Health Center regarding the commitment/admission process and the available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility. (Section 44-17-460, S.C. Code, 1976, as amended).
2. The licensed physician must also consult via telephone with the admitting physician of the receiving hospital regarding the appropriateness of admission and the persons mental and physical treatment needs.

NOTE: TO POLICE AND OTHER OFFICERS OF THE PEACE:
The certificate of a licensed physician authorizes and requires taking the proposed patient into custody. Section 44-17-440, South Carolina Code of Laws, 1976, as amended: "The certificate required by item 2 of Section 44-17-410 shall authorize and require any officer of the peace, preferably in civilian clothes, to take the individual into custody and transport him to the hospital designated by the certification. No person shall be taken into custody after the expiration of three days from the date of the certification. Any friend or relative may transport the individual to the mental health facility designated in the application, provided such friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility as an officer of the peace to provide timely transportation for the patient and that the friend or relative freely chooses to assume such responsibility. A friend or relative who chooses to transport the patient shall not be entitled to reimbursement from the State for the cost of such transportation. Any officer acting in accordance with the provisions of this article shall be immune from civil liability."

NOTE: TO FRIENDS AND RELATIVES:
It is the responsibility of an officer of the peace to provide timely transportation of the person alleged to be mentally ill to the designated mental health facility. However, by freely signing this statement, you can choose to assume that responsibility. Transportation must begin immediately. This form must be hand delivered by you to the admissions office of the designated mental health facility at the time of admission.

Date

Signature of Friend or Relative/Relationship

SCDMH FORM
APR 89 (REV. DEC. 99) M-130 pg. 2 of 2 (CG 12/99)
MH-FCC-2

EXHIBIT 4

PART II

CERTIFICATE OF LICENSED PHYSICIAN
EXAMINATION FOR EMERGENCY ADMISSION

Martha Argoe — NAME OF PERSON EXAMINED
62 — AGE
Dilg — COUNTY OF RESIDENCE

D AMHC — PLACE OF EXAMINATION
HOUR AND DATE OF EXAMINATION

I, THE UNDERSIGNED LICENSED PHYSICIAN, have examined the above-named person and am of the opinion that the said individual:

☐ IS MENTALLY ILL AND because of this mental condition CURRENTLY POSES A SUBSTANTIAL RISK of physical harm to self and/or others to the extent that INVOLUNTARY EMERGENCY HOSPITALIZATION is recommended.

My recommendation for INVOLUNTARY EMERGENCY HOSPITALIZATION is based on the following symptoms and specific examples of behavior which indicate mental illness and probable risk of harm:

Pt behavior have become problematic over last year by testimony of husband of 40 years. Pt has been spending a great deal of money, being secretive & accusatory, going out late at night by herself, flashing her jewelry, taking on precautions. Seems to be having paranoid symptoms. At any rate putting herself & husband & in dealing with her shows no insight or awareness of the risks & the problem she's causing family

The person is therefore to be transported to _____ NAME OF SCDMH PSYCHIATRIC HOSPITAL for involuntary emergency admission.

or to Anson Pavilion NAME OF NON-SCDMH HOSPITAL

For admission to SCDMH hospital, Physician must complete Part II, Page 2, over.

G. Hooker MD, M.D. — SIGNATURE OF LICENSED PHYSICIAN
16367 — S.C. LICENSE NUMBER

G. Hooker MD, M.D. — TYPED OR PRINTED NAME
PHONE NUMBER

ADDRESS

7456-H-011

All information MUST be typed or clearly printed.

CONFIDENTIAL

SCDMH FORM APR 89 (REV SEPT 93) M-131 Section 44-17-410(2)

EXHIBIT 5

Patient Name: **Argoe, Martha L**
Patient ID: **0000318679**

Date of Birth:
Age: 62 years
Gender: Female
Accession Number: 1150737
Location: TRMC MAIN
Referring Physician: Ronald Hargrave

Study Date: 07-Jun-2005 16:24
Procedure Types: CT HEAD SCAN W/O CONTRAST

Verified

CT CT HEAD SCAN W/O CONT 70450

CLINICAL HISTORY: MENTAL EVALUATION.

DATE OF EXAM: 6-7-05. COMPARISON: NONE.

Following data acquisition without IV contrast, images were reviewed as multiple contiguous transaxial slices.

Images indicate no evidence of mass effect, midline shift, or acute intracranial hemorrhage. The ventricles, sulci, and cisterns are preserved. CSF spaces about the frontal convexities are mildly prominent. Note is made of slight globus pallidus calcification on the right.

IMPRESSION:

Findings as above; no evidence of acute intracranial abnormality.

Robert E. Vaughan
07-Jun-2005 20:34

EXHIBIT 6

Aiken Regional
MEDICAL CENTERS
The Health Choice

202 University Parkway, Aiken, SC 29801

MED. REC. NO. 228094

PT NO: 101484616 | PATIENT NAME: ARGOE , MARTHA L | COUNTY: 38
ADDRESS: 1155 PUTTER PATH | STATE: SC | ZIP: 29115- | PHONE: 803-568-2111 | EXT.
CITY: ORANGEBURG | RELIGION: NON | TYPE: ADUL 16 - A
AGE: 62 | SEX: F | RACE: 1 | MS: M | PREVIOUS NAME | VOLUNTARY ADM: P | ORGAN DNR | ISOL | INFANT AGE
ADM DAY: 06/08/05 | TIME: 17:45 | SRC: RA | PT TYPE: I | PRI: U | ACCIDENT INFO: H 06/08/05 14:00
PT EMPLOYER: HOUSEWIFE | TELEPHONE | EXT | OCCUPATION: HOUSEWIFE
EMPLOYER ADDRESS | STATE | ZIP | RETIREMENT DATE
CITY
NEAREST RELATIVE NAME: ARGOE , GEORGE
RLTN: C | ADDRESS: 7 GLEN COURT | STATE: SC | ZIP: 99999- | PHONE: 864-901-4600 | EXT
CITY: GREER
EMERGENCY CONTACT NAME: ARGOE , GEORGE LEWIS
RLTN: U | ADDRESS: 1155 PUTTER PATH | STATE: SC | ZIP: 29115- | PHONE: 803-568-2111 | EXT
CITY: ORANGEBURG | RLTN: U
GUARANTOR NAME: ARGOE , GEORGE LEWIS | PHONE: 803-568-2111
ADDRESS: 1155 PUTTER PATH | STATE: SC | ZIP: 29115- | OCCUPATION: LAWYER | EXT
CITY: ORANGEBURG | PHONE | EXT
GUARANTOR EMPLOYER: SELF EMPLOYED
ADDRESS | STATE | ZIP | FC: A
CITY
INSURANCE NAME 1: COMMERCIAL OTH INS 1 | CODE: T01 | POLICY #: 247885277 | GROUP #: V06 | SUBSCRIBER: ARGOE , GEO | REL: U | AUTH #
INSURANCE NAME 2 | CODE | POLICY # | GROUP # | SUBSCRIBER | REL | AUTH #
INSURANCE NAME 3 | CODE | POLICY # | GROUP # | SUBSCRIBER | REL | AUTH #
ATTENDING PHYSICIAN: STEINER DAVID ANDREW | ATTENDING #: 003970 | REF SRC | ADM BY: USRYM | PREV ADM DATE | PREVIOUS FACILITY | SURGERY DATE
ADM DIAGNOSIS: PSYCHOSIS NOS | MED SVC: PSY | CODE | ALLERGIES
ADMITTING PHYSICIAN: STEINER DAVID ANDREW | ADMITTING #: 003970 | AUTHORIZED BY
PROCEDURE | CLINICAL COMMENT | MODE OF ARRIVAL/ACCOMPANIED BY
REL OF INFO: Y | ADV DIR | LIVING WILL | LOCATION OF WILL/DIRECTIVE | FAMILY DOCTOR

FINAL DIAGNOSES (FIRST DIAGNOSIS PRINCIPAL UNLESS NOTED) — CODE

PROCEDURES

CONFIDENTIAL

7456-H-002

CONSULTING PHYSICIANS

DRG _____

LOS _____

TRANS TO: ACUTE | SNF ☐ | REHAB ☐ | HOSPICE ☐ | HOME HEALTH ☐ | HOME IV ☐ | AGAINST MED ADV ☐ | HOME ☐
DISCHARGE DATE | TIME | OTHER
EXPIRED ☐ | TIME _____ | <48HRS ☐ | >48HRS ☐ | CORONER ☐ | AUTOPSY YES ☐ | NO ☐

ATTENDING PHYSICIAN SIGNATURE & DATE

RELASER, INC. C2486-20051 (714) 986-1559 (2/99) CHART COPY - DO NOT REMOVE FROM CHART

EXHIBIT 7

PART II

CERTIFICATE OF LICENSED PHYSICIAN EXAMINATION FOR EMERGENCY ADMISSION

Martha Argoe — NAME OF PERSON EXAMINED
62 — AGE
Orb — COUNTY OF RESIDENCE

DAMHC — PLACE OF EXAMINATION
3:00pm 6/8/05 — HOUR AND DATE OF EXAMINATION

I, THE UNDERSIGNED LICENSED PHYSICIAN, have examined the above-named person and am of the opinion that the said individual:

☐ IS MENTALLY ILL AND because of this mental condition CURRENTLY POSES A SUBSTANTIAL RISK of physical harm to self and/or others to the extent that INVOLUNTARY EMERGENCY HOSPITALIZATION is recommended.

My recommendation for INVOLUNTARY EMERGENCY HOSPITALIZATION is based on the following symptoms and specific examples of behavior which indicate mental illness and probable risk of harm:

Pt behavior has become problematic over last year by testimony of husband of 40 years & son. Pt has been spending a great deal of money being secretive & accusatory, going out late at night by herself flashing her jewelry, taking no medications. Seems to be having psychotic manic symptoms. At any rate putting herself at risk of harm & in talking with her shows no insight or awareness of the risks & the problem she is causing family

The person is therefore to be transported to _____ NAME OF SCDMH PSYCHIATRIC HOSPITAL

or to Anson Pavilion NAME OF NON-SCDMH HOSPITAL for involuntary emergency admission.

For admission to SCDMH hospital, Physician must complete Part II, Page 2, over.

G. Hooker MD, M.D. — SIGNATURE OF LICENSED PHYSICIAN
16367 — S.C. LICENSE NUMBER

G-Hooker MD, M.D. — TYPED OR PRINTED NAME
PHONE NUMBER

ADDRESS

All information MUST be typed or clearly printed.

SCDMH FORM
APR. 89 (REV SEPT. 93) M-131 Section 44-17-410(2)
MH-FCL-2

PART II
CERTIFICATE OF LICENSED PHYSICIAN EXAMINATION FOR EMERGENCY ADMISSION

Name of Patient	Sex	County of Residence	Date of Birth	Age
Martha A rose	F	Orb9	7-17-43	60

Are there prior admissions to SCDMH or other mental hospitals? ____ Yes ____ No — Where? — When?

Are there criminal charges? ____ Yes ✓ No — If yes, give details (include county, type of charge).

Reasons for psychiatric admission (specify symptomatology) (Not necessary to repeat if completed on Page 1, over.)

see Page 1

Medical Condition of patient: Complete workup done in ER - WNL

Is patient medicated prior to transporting? ____ Yes ✓ No — If yes, give type, amount, route and when administered.

Medication - Maintenance Drugs

HEALTH OF PATIENT

Disease	Yes	No	Date(s)	Disease	Yes	No	Date(s)	Disease	Yes	No	Date(s)
Paralysis or Crippled Limbs				Cancer				Homicidal or Suicidal Tendency			
Blindness or Eye Trouble				TB or Lung Disease				Mental Retardation or Dementia			
				Heart or Hi. Bl. Pressure							
Deafness or Ear Trouble				Tremors or Abnormal Movements				Syphilis			
								HIV			
Epilepsy or Seizures				Hepatitis				Alcohol Abuse			
				Serious Allergies				Drug Abuse			
Diabetes				Head Injury				Types Abused			

Patient's Operations

Name of treatment facility accepting admission: Aurora Pavilion

Name of treatment facility physician authorizing admission: Dr Stern

ON THE BASIS OF MY PERSONAL EXAMINATION I BELIEVE THAT THE PERSON IS IN NEED OF INVOLUNTARY EMERGENCY PSYCHIATRIC HOSPITALIZATION. FURTHERMORE, THE PERSON HAS NO MEDICAL/SURGICAL CONDITIONS OR DISABILITIES THAT PRESENTLY REQUIRE A GENERAL HOSPITAL OR NURSING HOME LEVEL OF CARE AND IS MEDICALLY STABLE AND PHYSICALLY ABLE TO PARTICIPATE IN PSYCHIATRIC TREATMENT.

I have consulted with the _____ Community Mental Health Center regarding Preadmission Screening. If not, state clinical reason _____

G. Harberson, M.D. — SIGNATURE OF LICENSED PHYSICIAN

16364 — S.C. LICENSE NUMBER

G. Harberson, M.D. — TYPED OR PRINTED NAME

PHONE NUMBER

ADDRESS

NAME OF CENTER

SIGNATURE OF FACE TO FACE SCREENER AND DATE

PRINTED NAME OF SCREENER, TITLE AND ID #

All information MUST be typed or clearly printed.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	COMMITMENT DIVISION
COUNTY OF DORCHESTER	)	(Ref: CASE NUMBER: 2007-GC-18-00009)
	)	
IN THE MATTER OF	)	**CERTIFICATE OF SERVICE**
Martha L. Argoe	)	
	)	

I, Israel Stone, a legal assistant for the law firm of Warner, Payne & Black, L.L.P./ ElderLaw Services of South Carolina, P.A., attorneys for Martha Lewin Argoe, do hereby certify that on this date I caused a copy of the **Petition to Vacate Commitment Based upon Lack of Subject Matter Jurisdiction** to be served upon the parties listed below by depositing a copy of same in the United States Mail, postage pre-paid, and addressed to the following:

Thomas A. Pendarvis, Esquire
500 Carteret St., Suite A
Beaufort, South Carolina 29902-5066

Israel Stone

Columbia, South Carolina
March 25, 2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
Martha Lewin Argoe)
☐ Plaintiff(s))
)
v.)
)
Three Rivers Behavior Center, LLC, Et Al.)
☐ Defendant(s))

IN THE COURT OF COMMON PLEAS

COPY

FILED

CASE NO.
07-CP-32-1981

2013 JAN 23 A 11: 19

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

DANIEL E. CARRIGG
CLERK OF COURT
LEXINGTON SC

Plaintiff's Attorney:	Defendant's Attorney:
Robert D. Dodson, Bar No.	William H. Davidson, II, Bar No. 1558
Address:	Address:
1722 Main Street, Suite 200, Columbia, SC 29201	Post Office Box 8568, Columbia, SC 29202-8568
phone: 252-2600 fax:	phone: 803-806-8222 fax: 803-806-8855
e-mail: other:	e-mail: wdavidson@dml-law.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

W. H. Davidson II — 01/18/13

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE
☐ Other:	CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

DLSCN 01/28/13

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

2013 JAN 23 A 11: 19

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

Civil Action No. 2007-CP-32-1981

Martha Lewin Argoe,

Plaintiff,

v.

Three Rivers Behavioral Center, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryant-Mobley, MD, Aiken Regional Medical Center, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN, and Carolina Care Plan,

Defendants.

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

TO: ROBERT D. DODSON, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for Defendant Phyllis Bryant-Mobley, M.D., will move before the Presiding Judge of the Eleventh Judicial Circuit at the Lexington County Courthouse, Lexington, South Carolina, on the tenth (10th) day after service hereof at 10:00 a.m., or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure dismissing this action with prejudice. The grounds for this motion are as follows:

1) There is no evidence of any deviations from accepted standards of medical practice on the part of Defendant Bryant-Mobley that are a proximate cause of the Plaintiff's alleged injuries and damages; and

2) Plaintiff's allegations are barred by the doctrine of lawful authority; and

DLSCN 01/28/13

3) Plaintiff's allegations are barred by the doctrines of good faith, justification, reasonableness and privilege; and

4) Plaintiff's allegations are barred by the doctrine of res judicata; and

5) Plaintiff's allegations are barred by the doctrines of absolute privilege and conditional privilege; and

6) Plaintiff's allegations are barred by the doctrines of absolute and quasi-judicial immunity; and

7) Defendant Bryant-Mobley did not assault or batter the Plaintiff.

This motion is based upon the pleadings and discovery in this case, the rules of court, the deposition testimony of Defendant Phyllis Bryant-Mobley, M.D., Albert Lewin and Donna Powell, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

WILLIAM H. DAVIDSON, II
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
wdavidson@dml-law.com
T: 803-806-8222
F: 803-806-8855

ATTORNEYS FOR DEFENDANT BRYANT-MOBLEY

COLUMBIA, SOUTH CAROLINA

JANUARY 18, 2013

DLSCN 01/28/13

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

FILED
2013 JAN 23 A 11: 1
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Martha Lewin Argoe,

Plaintiff,

v.

Three Rivers Behavioral Center, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Aiken Regional Medical Center, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN, and Carolina Care Plan,

Defendants.

Civil Action No. 2007-CP-32-1981

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for Defendant Bryant-Mobley, does hereby certify that service of a **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** in the above-captioned action was made upon all counsel of record via electronic mail and by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 18th day of January, 2013, addressed as follows:

Robert D. Dodson, Esquire
1722 Main Street, Suite 200
Columbia, South Carolina 29201

Andrew N. Cole, Esquire
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, South Carolina 2921

James E. Parham, Jr., Esquire
Post Office Box 1576
Irmo, South Carolina 29063

George C. Beighley, Esquire
Richardson, Plowden & Robinson, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202

Noah M. Hicks, II, Esquire
Law Offices of Noah M. Hicks II, LLC
Post Office Box 7996
Columbia, South Carolina 29202

Elloree A. Ganes, Esquire
Hood Law Firm, LLC
Post Office Box 1508
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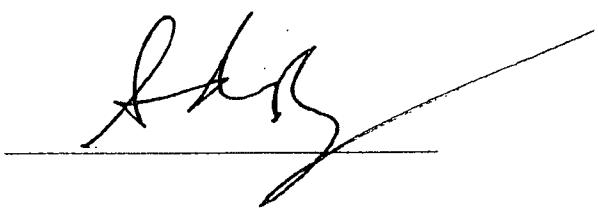

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	11th JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	CIVIL ACTION NUMBER: 07-CP-32-1981
Plaintiff,	)	
vs.	)	**DEFENDANTS THREE RIVERS BEHAVIORAL CENTER'S AND DORIS ANN BURRELL, RN'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
Three Rivers Behavioral Center and Psychiatric Solutions, Its Successor; Phyllis Brant-Mobley, MD; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan	)	
Defendants.	)	

Defendant Three Rivers Behavioral Center (hereinafter "Three Rivers") and Defendant Ann Burrell, RN (hereinafter "Nurse Burrell") submit this memorandum in support of their motion for summary judgment that was filed around November 26, 2012, and scheduled for argument before the Honorable William P. Keesley on August 29, 2013. Three Rivers and Nurse Burrell should be granted summary judgment on Plaintiff's sole cause of action alleging medical negligence arising from the involuntary commitment of Plaintiff in 2005. The grounds for this Motion are that Three Rivers and Nurse Burrell have quasi-judicial immunity as they acted pursuant to a valid Court order and, alternatively, Plaintiff's claims fail as a matter of law.

FACTS

This matter is currently postured as a medical malpractice claim arising from the involuntary commitment of Plaintiff. The commitment proceedings started on June 6, 2005. Plaintiff was treated at Three Rivers from June 9 through her discharge on July 20, 2005. Pursuant to a court order for continued commitment issued after a hearing on June 21, 2005, Plaintiff received

outpatient treatment for one year until she was discharged around July/August 2006. Plaintiff initiated litigation on August 15, 2006.

This case has a long and tortured procedural background. Plaintiff filed certain claims in Beaufort County on August 15, 2006 (C/A No. 2006-CP-07-2013). Plaintiff filed the present action in Lexington County on June 6, 2007. The Beaufort action was subsequently consolidated into the Lexington action in September/October, 2007. After two separate grants of summary judgment in favor of the attorney for Plaintiff's Husband and Son as well as Psychiatric Solutions, the successor owner of Three Rivers, the matter was appealed to the South Carolina Supreme Court twice. There are two published opinions based on these appeals: Argoe v. Three Rivers Behavior Center and Psychiatric Solutions, Its Successor, et al., 388 S.C. 394, 697 S.E.2d 555 (2010), reh'g den. (Sept. 2, 2010) (Argoe I) (finding no attorney-client relationship between Ms. Argo and the attorney for Ms. Argoe's Husband and Son, where the Son held Ms. Argoe's durable power of attorney); and Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 710 S.E.2d 67 (May 31, 2011) (Argoe II) (upholding the underlying involuntary commitment proceedings and upholding the grant of summary judgment on various cases of action in favor of Psychiatric Solutions).

The Argoe II Court found that the involuntary commitment under the applicable Probate Code statutes is "presumed valid" and cannot now be challenged. Argoe II at 476, 710 S.E.2d at 75. The Supreme Court further found that the conduct of Psychiatric Solution, which is the successor in interest to Three Rivers, "toward[s Mrs. Argoe] was lawful, justified, and reasonable." Id. As an established fact and/or law of this case, therefore, Plaintiff was properly and lawfully detained and later transferred to Three Rivers for involuntary inpatient psychiatric

treatment. The Argoe II court set forth in its factual recitation the statutory support for its findings:

> Pursuant to section 44–17–410 of the South Carolina Code, Appellant's husband (Husband) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005.
>
> On June 6, 2005, Probate Court Judge Pandora L. Jones–Glover issued an Order of Detention that referenced section 44–17–430 of the South Carolina Code and provided that an "officer of the peace take the person [Appellant] alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician."
>
> On June 7, 2005, deputies with the Orangeburg County Sheriff's Department transported Appellant to the emergency room of The Regional Medical Center of Orangeburg (TRMC). At 3:35 p.m., Appellant was given a physical and mental evaluation. Appellant was discharged at 5:13 p.m. with a diagnosis of "Altered Mental Status" and instructions for her to return the following day for further evaluation. Subsequently, Appellant was driven home by law enforcement.
>
> On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated Appellant at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44–17–410(2) of the South Carolina Code. In this document, Dr. Hooker certified that inpatient psychiatric hospitalization was medically necessary for Appellant and identified Aurora Pavilion Behavioral Health Services (Aurora), a division of the Aiken Regional Medical Center, as the facility that would accept Appellant for further treatment. Appellant's medical records verify that she was involuntarily admitted to that facility on June 8, 2005 at 5:45 p.m. An attending physician at Aurora completed the requisite Physician Certification form stating that he certified that "the inpatient psychiatric hospital admission was medically necessary for psychiatric treatment, which could reasonably be expected to improve the patient's condition."
>
> On June 9, 2005, due to health insurance constraints, Appellant was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (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, [after a motion to change venue from the Orangeburg County Probate Court, the] 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 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 465-468, 710 S.E2d at 69-70 (underlined emphasis in original; internal footnotes omitted). Again, pursuant to the June 21, 2005, Order from Probate Judge Lawson, Plaintiff completed her one-year of out-patient therapy around July/August 2006. Soon after completing her outpatient treatment, Plaintiff commenced litigation.

Nurse Burrell, the only nurse at Three Rivers specifically named in Plaintiffs' lawsuit, had limited contact with Plaintiff. After being appointed by the Probate Court as the second designated examiner by order dated June 10, 2005, Nurse Burrell reviewed the then existing records, conducted interviews, and issued her examination report on June 15, 2005. Nurse Burrell's recommendations mirrored the conclusions of Dr. Phyllis Mobley which, together with other information, was reviewed by Probate Judge Lawson at the June 21, 2005, continued

commitment hearing. Nurse Burrell filled out no additional paperwork and had no other contact with Plaintiff after the June 21, 2005, hearing when Probate Judge Lawson ordered Plaintiff to continue her in-patient treatment and, upon discharge, complete twelve months of out-patient psychiatric treatment.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, __, 671 S.E.2d 79, __ (2008) (citations omitted). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." Gauld, at __, 671 S.E.2d at (citations omitted). To withstand a motion for summary judgment the non-moving party must submit evidence of a genuine issue of material fact. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Gauld, at __, 671 S.E.2d at __ (citations omitted). A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. Guinan v. Tenet Healthsystems of Hilton Head, 383 S.C. 48, 54-55, 677 S.E.2d 32, __ (2009):

ARGUMENT

(1) Three Rivers and Nurse Burrell are Immune from Liability

It is clear from the record and confirmed by the Supreme Court in Argoe II that Plaintiff was involuntarily committed pursuant to the emergency commitment statutes in sections 44-17-410, *et seq.* Nurse Burrell's only involvement with Plaintiff was as the second appointed designated examiner. "Court-appointed examiners are essentially an arm of the judiciary," and "quasi-judicial immunity for acts performed within the scope of appointment is necessary to protect the court-appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the guardianship proceedings." Vaughn v. McLeod Regional Medical Center, 372 S.C. 505, 512, 642 S.E.2d 744, 748 (2007).

In Vaughn, Mrs. Vaughn and her adult daughter filed a petition for the appointment of a guardian for Mr. Vaughn in Marlboro County Probate Court. Vaughn, at 507, 642 S.E.2d at 745. Judge Mark Heath appointed Dr. Wilson and Dr. Gallagher to examine Mr. Vaughn and to report their findings regarding Mr. Vaughn's mental capacity to the Probate Court. Id. The doctors found Mr. Vaughn was an "incapacitated person," was impaired by reason of mental deficiency, physical illness or disability, and chronic intoxication, and this condition was permanent. Id. Based on the evidence, Judge Heath found Mr. Vaughn was incapacitated and appointed guardians, a conservator, and an attorney with the powers and duties of a guardian ad litem. Vaughn, at 508, 642 S.E.2d at 746. Three months later, Judge Heath signed an order declaring that Mr. Vaughn was no longer incapacitated. Id. Mrs. Vaughn filed suit alleging, among other things, that Dr. Wilson and Dr. Gallagher negligently and erroneously informed her and the Marlboro County Probate Court that Mr. Vaughn was permanently incapacitated. Id. The circuit

court granted summary judgment in favor of McLeod Regional Medical Center, Theresa Gallagher, M.D., and Thomas Wilson, M.D.

The Supreme Court of South Carolina affirmed the decision finding, "[i]f court-appointed examiners in guardianship proceedings are not afforded immunity, the exposure to liability will have a chilling effect on future acceptances of such appointments." Vaughn, at 512, 642 S.E.2d at 748. The Supreme Court further found the type of allegation (i.e. Appellant alleging failure to properly diagnose because she was unhappy with the finding of incapacity) was "precisely why absolute quasi-judicial immunity must be extended to court-appointed examiners in guardianship proceedings." Id. at 513, 642 S.E.2d at 748-749.

In the present action, the probate court, pursuant to the South Carolina Code of Laws regarding involuntary commitment proceedings, appointed Dr. Phyllis Brant-Mobley and Nurse Burrell to act as the mental health examiners for Plaintiff. The designated examiner reports as well as other information were reviewed by Probate Judge Marvin Lawson before he issued the June 21, 2005, Order for Continued Treatment. The Supreme Court has already determined that there was a substantial basis for the continued involuntary, in-patient treatment of Plaintiff.

> Additionally, we disagree with Appellant's assertion that her involuntary commitment was without a factual basis. In support of this assertion Appellant directs this Court's attention to numerous documents, including Dr. Leonhardt's consulting opinion dated June 14, 2005, which was requested by Dr. Bryant–Mobley and reviewed by Dr. Dodds. It was indicated in the opinion that Appellant's condition was the result of "marital conflict" as she was an "alleged victim of abuse." Initially, we would note that Judge Lawson presumably took into consideration Dr. Leonhardt's opinion as the court-appointed examiners presented their findings to Judge Lawson during the June 21, 2005 hearing. Furthermore, the remaining documents offered by Appellant are depositions and affidavits that post-date the involuntary commitment proceedings. These after-the-fact documents cannot operate to retroactively invalidate the commitment orders that were procedurally proper and factually substantiated by court-appointed medical personnel. To find otherwise, we would undermine the probate court's authority in involuntary commitment proceedings.

Argoe II at 471, 710 S.E.2d at 72-73.

In fact, the Supreme Court already determined that Three Rivers is entitled to immunity. The Supreme Court reached this conclusion when addressing Plaintiffs prior asserted claim for defamation. "We find that summary judgment was properly granted to [Psychiatric Solutions, the successor owner of Three Rivers] as any communications issued by Three Rivers' employees were qualifiedly privileged as they were done in effectuating the lawful orders of the probate court." Argoe II, 392 S.C. at 474, 710 S.E.2d at 74.

At all relevant times, Defendants Three Rivers and Nurse Burrell were working within the bounds of the court appointment for the treatment of Plaintiff. Plaintiff filed suit because she was unhappy she was found incapacitated and allegedly treated against her will. Based on the Supreme Court's previous findings that "quasi-judicial immunity for acts performed within the scope of appointment is necessary to protect the court-appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the guardianship proceedings," Defendants Three Rivers and Nurse Burrell respectfully request this Honorable Court grant their motion for summary judgment.

(2) Alternatively, Plaintiff's Claim for Medical Malpractice Negligence fail as a matter of Law Because She has Shown No Damage and Has No Qualified Testimony to Create an Issue of Fact for the Jury.

In her Second Amended Complaint, Plaintiff alleges the sole cause of action for medical malpractice negligence. "In a medical malpractice action the plaintiff must establish (1) the generally recognized practices and procedures which would be exercised by competent practitioners in a defendant doctor's field of medicine under the same or similar circumstances, and (2) a departure by the defendant FROM THE RECOGNIZED AND GENERALLY ACCEPTED standards, practices and procedures." Fletcher v. MUSC, 390 S.C. 458, 462-463,

702 S.E.2d 372, __ (Ct.App. 2012) (emphasis in original; internal quotations and citations omitted). "Furthermore the plaintiff must present evidence that the defendant's failure to adhere to the standard of care proximately caused the complained of injury." Id. At 463, 702 S.E.2d __. "Negligence is not actionable unless it is a proximate cause of the injury complained of, and negligence may be deemed a proximate cause only when without such negligence the injury would not have occurred or could have been avoided." James v. Lister, 331 S.C. 277, 286, 500 S.E.2d 198, 203 (Ct.App. 1998) (quoting Ellis v. Oliver, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996)). "When one relies solely upon the opinions of medical experts to establish a causal connection between the alleged negligence and the injury, the experts must, with reasonable certainty, state that in their professional opinion, the injuries complained of most probably resulted from defendant's negligence." Id.

Plaintiff named five expert witnesses in January and February of this year but withdrew one. Plaintiff's testifying experts are: Dr. Dave Davis, psychologist (deposition taken May 30, 2013); Dr. Frank Quinn, licensed professional counselor (deposition taken May 17, 2013); Lucinda L. DeBruce, nurse practitioner (deposition taken May 24, 2013); and Tiffany Provence, former probate court judge (deposition taken March 14, 2013). None of these experts has offered any testimony that Plaintiff suffered any physical or mental damages as a result of the alleged negligent conduct of the defendants.[1] The principal focus of these witnesses is to

---

1 Q. Are you aware of any side effects Ms. Argoe had as a result of medications?
A. No.

Dr. Davis deposition, p. 140, ll.23-25.

Q. You may have answered this earlier, but do you have any evidence that the fact she was on these antipsychotic medications has caused her any physical or mental damage?
A. No.
Q. And I didn't see anything in your assessment of Ms. Argoe in April of 2008, either through your database or your interview with her or even the testing, did you see any residual problems they [sic] she had from being involuntary committed for 41 days?

criticize the commitment procedures set forth by statute in South Carolina. As noted above, Plaintiff cannot now challenge the initial commitment. See Argoe II. Moreover, Plaintiff's principal witnesses acknowledge that they are not familiar with the involuntary commitment proceedings in South Carolina.[2] Ms. DeBruce acknowledges that she can offer no testimony linking the alleged negligence to any claimed damages.[3] Dr. Davis acknowledges that he has no

---

A. Yea, she was mad as hell.
Q. Other than mad? I'm mad that I'm sitting here.
A. Well, she had to go through all this litigation. Endless expenses.
Q. I'm talking about physically or mentally, any residual problems from the admission other than anger?
A. I think stress, a lot of stress from having to, you know, go through the Court sytem and have to keep being involved in all this long, drawn-out litigation.
Q. Other than stress from this litigation, anything else?
A. I guess – I guess we mentioned expense, correct?
Q. Yes, sir.
A. No.

Dr. Davis deposition, p.162, ln.3 – p.163, ln.6

[2] "I don't know exactly how [involuntary commitment] works in South Carolina." Deposition of Dr. Davis p. 36.

Q. Have you ever served as a designated examiner?
A. No, I have not.
Q. Do you know what that is?
A. Yes.
Q. Okay. How do you know what a designated examiner is?
A. Well, in looking at the documents, where it says the "REPORT OF THE DESIGNTED EXAMINER," it basically outlines what's needed and what's involved.
Q. All right. So have you done any other research other than reading through the report of the designated examiner, in this case?
A. No.

Deposition of Linda DeBruce p.17, ll. 4-18.

Q. And, again, to clarify: other than reading through this [designated examiner report by Nurse Burrell], have you read anything dealing with designated examiners in South Carolina?
A. No.

Deposition of Linda DeBruce p.19, ll. 3-7.

[3] Q. Do you have any opinion about proximate cause and damages to Ms. Argoe in this case as a result of this committmenet?
A. No.

Deposition of Linda DeBruce p.95, ll. 17-20.

basis to question the care provided by the nursing staff at Three Rivers.[4] Plaintiff's own experts' testimony fails to make the link that the actions of Three Rivers and/or its nursing staff was the most probable cause of Plaintiff's alleged injuries. Instead, Plaintiff's experts confirm that different doctors may have different opinions about the treatment of a patient.[5] A mere difference in opinion is not proof of a deviation in the standard of care.

Plaintiff's experts acknowledge that Plaintiff receive the same treatments and medications while in Three Rivers that she received during the twelve month outpatient treatment period ordered by Probate Judge Lawson in his order dated June 21, 2005.[6] Although Plaintiff's cause of action is for negligence, the damages she currently seeks are more akin to

---

4 A. ... And I don't know that the nurses here ever brought up to the doctors, you know, why is this woman in the hospital.
Q. How do you know the nurses never brought that up to the doctors?
A. Well, okay, I don't, but it's not in the record.
Q. In your clinical practice, is it typical for a nurse to write in a record Dr. Jones is wrong?
A. No.
Q. Okay.
A. No. Much more likely they come and speak to me.
Q. And so, is there anything in any of the documentation you've reviewed, any of the depositions you reviewed or any conversations you've had with anybody that suggests to you that the nurses did not speak to the doctors about Ms. Argoe's treatment?
A. No. I don't know whether they did or not.

Deposition of Dr. Davis, p.88, ln.10 – p.89, ln.3

5 Q. Now, would you agree that two medical professionals could assess someone and see the same patient and determine or assess the patient differently, have a different provisional diagnosis for that patient?
A. You could say that happen?
Q. Sure.
A. Sure.
Q. Is that common that that happens?
A. Fairly common.

Deposition of Dr. Davis, p. 121, ll.12-21.

6 Q. Other than the fact that when she was in Three Rivers she was involuntary and can't leave with her own decision, at Three Rivers she was getting therapy and getting medications, correct?
A. Right.
Q. The only difference between that and a year of outpatient is that she could come and go as she pleases after she had the visits, correct?
A. Right.

Deposition of Dr. Davis, p.156, ll.4-12.

false imprisonment. Once again, the Supreme Court in Argoe II has already ruled that any claims for Plaintiff's claim that she was involuntarily committed cannot be recovered in this case.

> As previously discussed, [Ms. Argoe] was lawfully taken into custody and detained pursuant to valid probate court orders. It is generally accepted that:
>
> > A person confined pursuant to an authorized mental health commitment proceeding or process may not recover damages in a false imprisonment action. In accordance with the general rule dealing with confinement under process, even where the order of commitment is erroneously made, but is valid on its face and issued by a court of competent jurisdiction, the detention is not false imprisonment.
> >
> > State hospital officials have no duty to examine the form of the report of the examining psychiatrist upon which an order of commitment was based, nor is there any duty to examine or investigate a commitment order valid on its face, unless there is knowledge that there was, in fact, no basis for implementing the order.

Argoe II at 473, 710 S.E.2d at 73 (quoting 32 Am.Jur.2d False Imprisonment Sec. 33 (2007)).

CONCLUSION

For all the reasons stated above, Defendant Three Rivers Behavioral Center and Defendant Ann Burrell, RN respectfully request this Honorable Court grant their Motion for Summary Judgment and dismiss all claims asserted by Plaintiff against them. Three Rivers and Nurse Burrell have absolute quasi-judicial immunity for their actions during Plaintiff's involuntary commitment. Moreover, Plaintiff's claims for medical malpractice negligence fail as a matter of law based on *res judicata* and/or the failure of her experts to articulate a deviation from the standard of care.

Respectfully submitted,

COLLINS & LACY, P.C.

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August 29, 2013

CERTIFICATE OF SERVICE

FILED

I hereby certify that a copy of the foregoing **ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT BY DEFENDANTS, THREE RIVERS BEHAVIORAL HEALTH, LLC AND DORIS ANN BURRELL, RN** was either hand delivered or mailed to counsel of record in this proceeding this 29th day of August, 2012.

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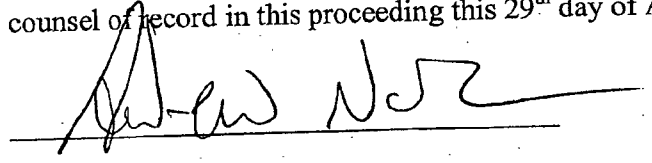

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	C/A No. 07-CP-32-1981
Plaintiff,	)	
Versus	)	**MEMORANDUM IN SUPPORT OF DEFENDANT DAVID A. STEINER, M.D.'S MOTION FOR SUMMARY JUDGMENT**
Three Rivers Behavioral Center, LLC; Phyllis Bryant-Mobley, MD; Aiken Regional Medical Center; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN and Carolina Care Plan	)	
Defendants.	)	

The Defendant, David A. Steiner, M.D. (hereinafter "this Defendant" or "Dr. Steiner"), pursuant to South Carolina Rule of Civil Procedure 56, submits this memorandum in support of his Motion for Summary Judgment, respectfully showing the court the reasons set forth below which entitle him to an entry of summary judgment in his favor in this case.

I. STATEMENT OF FACTS

The Plaintiff, Martha Lewin Argoe ("Plaintiff") was married to G. Lewis Argoe, Jr. ("Argoe, Jr.") for forty-two (42) years. They had one child, George Lewis Argoe, III ("Argoe, III"). Plaintiff and Argoe, Jr. allegedly had marital problems for a number of years to the extent that Plaintiff moved out of their bedroom several years before they separated. On or about April 20, 2005, Argoe, Jr. went to Orangeburg Mental Health Center and spoke with a counselor about involuntarily committing Plaintiff to a psychiatric facility. Plaintiff gave her son her Power of Attorney a year prior to this incident.

On June 6, 2005, Argoe, Jr. secured a Commitment Order from The Probate Court to commit Plaintiff to a psychiatric facility. Plaintiff was picked up on June 8, 2005 by Orangeburg County law enforcement, and was evaluated by Dr. Glenn Hooker, with Argoe, Jr. present for the evaluation. Dr. Hooker then signed an Affidavit in support of Plaintiff's commitment. Plaintiff was subsequently taken to Aiken Regional Aurora Pavilion, where she was seen by Dr. Steiner for an initial evaluation. Dr. Steiner made an initial assessment and estimated a ten day length of stay for the involuntary commitment. He noted in his records that he would speak with her son (whom she trusted) the following day. Ms. Argoe refused all medication while she was at Aurora and only spent one night there.

Because her health insurance (Carolina Care Plan) would not cover her stay at Aurora, Plaintiff was transferred to Three Rivers Behavioral Center in Lexington on June 9, 2005. This transfer occurred only 26.5 hours after her arrival. While at Three Rivers, Plaintiff was seen by Doctors Mobley, Dodds, and Nurse Burrell. Plaintiff was discharged from Three Rivers on July 20, 2005. Plaintiff's total confinement, including her time with the Orangeburg Police, her brief stay at Aurora, and her stay at Three Rivers, was forty-three (43) days. She was ordered, as a condition of her discharge, to undergo out-patient treatment, which she did.

Plaintiff originally brought this action alleging multiple causes of action against numerous Defendants including intentional infliction of emotional distress, negligence, false imprisonment, conspiracy, abuse of process, defamation, invasion of privacy, and public disclosure of a private fact. Through Summary Judgment and voluntary dismissals, all causes of action except a professional negligence claim are

disposed of. Plaintiff amended her Complaint following the Supreme Court's decision in Argoe v. Three Rivers Behavioral Health, LLC, et al., 392. S.C. 467, 710 S.E.2d 67 to make a claim for medical negligence against Dr. Steiner. Dr. Steiner now moves for summary judgment on the medical negligence claim.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), S.C.R.C.P. The moving party need not support its motion with affidavits or other materials negating the opponent's claims; instead, the moving party can simply point to the absence of evidence to support the nonmoving party's claims. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537 (1991). Once the moving party satisfies its burden, the nonmoving party must demonstrate specific facts showing that there is a genuine issue for trial. Id.

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App. 2003). Instead, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(c) SCRCP; Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct.App. 1999). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App. 2004).

"This Court has established that '[t]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.'" Hansson v. Scalise Builders of S.C. and Sam Scalise, 374 S.C. 352, 650 S.E.2d 68 (2007) (citing Baughman v. Amer. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)). A court cannot properly deny a defendant's motion for summary judgment after only finding a genuine issue of material fact as to one element of the plaintiff's claim. Id. Under Baughman, to withstand a motion for summary judgment, the court must determine that a genuine issue of material facts exists for each element of the plaintiff's case. Id.

III. ARGUMENT

A. Summary judgment should be granted in favor of Dr. Steiner as to because he complied with the South Carolina involuntary commitment statutes.

Title 44, Chapter 17 of the Code of Laws of South Carolina, 1976, governs the care and commitment of mentally ill persons. Specifically, Article 7 of this Chapter deals with the procedures for judicial commitment. S.C. Code Ann. § 44-17-580 provides the procedure by which the Probate Court may order the involuntary commitment of a person found to be mentally ill. These actions are commenced by filing a petition with the probate court. S.C. Code Ann. § 44-17-510. This is to be accompanied by a certificate of a physician stating that he has examined the patient and he is of the opinion that the person should be hospitalized. Id. This statute provides that if the court finds by clear and convincing evidence that the person is mentally ill and is likely to cause serious harm to himself or others, the court may

order either in-patient or out-patient involuntary treatment. S.C. Code Ann. § 44-17-580.

In this case, Ms. Argoe's husband filled out an Application for Emergency Hospitalization for Mental Illness (attached hereto as Exhibit A), identifying the reasons for concern regarding his wife's mental capacity. Dr. Glenn Hooker also filled out the Examination for Emergency Admission (attached hereto as Exhibit B), outlining the specific reasons for his recommendation for involuntary commitment. After a full hearing on the issues involved, the Probate Court then issued a Commitment Order (attached hereto as Exhibit C), requiring the Plaintiff to be committed because she posed a danger to herself or others as a result of her mental condition.

Dr. Steiner simply complied with the Probate Court Order at all times during the commitment of the Plaintiff. The Probate Court issued an Order involuntarily committing the Plaintiff pursuant to the statute because she was found to be in danger of serious harm to herself or others. Since the last hearing on the Defendants' Motions for Summary Judgment in this case, the South Carolina Supreme Court set forth that the commitment of Ms. Argoe was lawful. Argoe v. Three Rivers Behavioral Health, LLC, et al., 392. S.C. 467, 710 S.E.2d. The Order of the probate court required Dr. Steiner to comply and participate in the commitment of the Plaintiff. In all aspects of his treatment of Ms. Argoe (which was only an initial assessment), Dr. Steiner was merely complying with the court order, as he was legally obligated to do. To do otherwise, Dr. Steiner would have been in contempt of court. All of Dr. Steiner's actions were undertaken pursuant to the Order and he did not have the option to disregard the Order of the Probate

Court. As Dr. Steiner complied with the Order issued by the Probate Court, he is entitled to summary judgment on the Plaintiff's medical negligence cause of action. In addition, given the law of this case that the initial commitment procedures and the subsequent commitment orders after Dr. Steiner Ms. Argoe are valid, Plaintiff cannot establish a breach in the standard of care as to Dr. Steiner's treatment of her which proximately caused her damages. As such, summary judgment should be entered in his favor.

B. The Plaintiff is not entitled to punitive damages because there is no evidence of willful, wanton, or reckless conduct.

"The trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party's case." Fender & Latham, Inc. v. First Union National Bank of South Carolina, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994). Punitive damages are available in South Carolina if the defendant's conduct was willful, wanton, or malicious. Cartee v. Lesley, 290 S.C. 333, 337, 350 S.E.2d 388 (1986). The plaintiff must prove that he is entitled to punitive damages by clear and convincing evidence. S.C. Code § 15-33-135. "Ordinarily, the test is whether the tort has been committed in such a manner or under circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the plaintiff's rights." Cartee, 290 S.C. at 337. Punitive damages are not available absent an award of actual damages. Dowling v. Home Buyers Warranty Corp., 311 S.C. 233, 428 S.E.2d 709 (1993).

As demonstrated above, summary judgment is appropriate because the plaintiff cannot prove the elements of her claim. Even if the Court does not enter

summary judgment on all of the Plaintiff's claims against this Defendant, there is no evidence—let alone clear and convincing evidence—that this Defendant acted willfully, wantonly, or with reckless disregard for the rights of Ms. Argoe. The Probate Court issued an Order for Plaintiff's commitment and this Defendant was merely complying with that Order, as was his legal obligation to do. Additionally, none of this Defendant's medical records were created for the purpose of having the Plaintiff committed. Therefore, this Defendant is entitled to summary judgment on the Plaintiff's claims for punitive damages prior to a trial on the merits, if summary judgment is not granted.

IV. CONCLUSION

For the foregoing reasons, this Defendant respectfully requests that this Court grant summary judgment on the Plaintiff's claims against this Defendant.

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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ mailing, ☐ e-mailing, ☐ facsimile, or ☒ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 29th day of August, 2013.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF LEXINGTON	)	
Martha Lewin Argoe,	)	Civil Action No. 2007-CP-32-1981
Plaintiff,	)	
v.	)	**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT PHYLLIS BRYANT-MOBLEY, M.D.**
Three Rivers Behavioral Center, LLC, Phyllis Bryant-Mobley, MD, Aiken Regional Medical Center, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN, and Carolina Care Plan,	)	
Defendants.	)	

Defendant Phyllis Bryant-Mobley, M.D. has moved before the Court for an Order granting Summary Judgment in this action pursuant to SCRCP 56(b), upon the basis that the record before the Court shows no grounds for legal liability on the part of this Defendant to the Plaintiff. The pleadings, discovery responses, medical records, orders of other courts and depositions reveal no disputed issues of material fact as to this Defendant and as a matter of law no basis exists for liability on the part of this Defendant.

STATEMENT OF THE FACTS

Pursuant to S.C. Code Ann. § 44-17-410, Plaintiff's husband "filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005." *Argoe v. Three Rivers Behavioral Health, et al.*, L.L.C., 392 S.C. 462, 466, 710 S.E.2d 67 (2011). "On June 6, 2005, Probate Court Judge Pandora L. Jones-Glover issued an Order of Detention that referenced section 44-17-430 of the South Carolina Code and provided that an 'officer of the peace take the person [Plaintiff] alleged to be mentally ill into

custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician.'" *Id.* "On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated [Plaintiff] at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44-17-410(2) of the South Carolina Code." *Id.* Dr. Hooker felt that Ms. Argoe was demonstrating manic symptoms and was putting herself at risk of harm in that she showed no insight or awareness as to the risks of her behavior nor did she have insight into the problems she was causing her family. See Ex. 1, Hooker Affidavit ¶ 5. Therefore, based on his assessment, Dr. Hooker was of the opinion within a reasonable degree of medical certainty that Ms. Argoe possessed a substantial risk of physical harm to herself and that involuntary emergency hospitalization was necessary. See Ex. 1, Hooker Affidavit ¶ 6.

For these reasons, Ms. Argoe was referred to the Aurora Pavilion at Aiken Regional Medical Center for involuntary emergency admission. *Id.* After Dr. Hooker's evaluation, emergency commitment papers were prepared which authorized the hospitalization of Ms. Argoe at the Aurora Pavilion. Defendant Bryant-Mobley was not involved in any of these proceedings or events. See Ex. 2, Bryant-Mobley Affidavit ¶ 2.

"On June 9, 2005, due to health insurance constraints, [Plaintiff] was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (Three Rivers)." *Argoe*, 392 S.C. at 467, 710 S.E.2d 67. This transfer to Three Rivers was under the jurisdiction of the probate court as a result of the commitment order for Ms. Argoe. "Based on her initial psychiatric evaluation, which was conducted by [Defendant] Dr. Phyllis Bryant-Mobley, a provisional diagnosis was made that [Plaintiff] was suffering from bipolar disorder with manic and psychotic features." *Id.* At that time, Defendant Bryant-Mobley determined that Ms. Argoe's global assessment of

functioning (GAF) score was 25 which indicated behavior considerably influenced by delusions and impairment in judgment. See Ex. 2, Bryant-Mobley Affidavit ¶ 3. Additionally, internist Dr. Nehal Desai evaluated Ms. Argoe at Defendant Bryant-Mobley's request and also found symptoms consistent with paranoid ideation and bipolar disorder. See Ex. 2, Bryant-Mobley Affidavit ¶ 4.

"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." *Argoe,* 392 S.C. at 467, 710 S.E.2d 67. Also, on June 13, 2005, "Judge Lawson appointed Dr. Bryant-Mobley and Doris Ann Burrell, a registered nurse, as designated examiners." *Id.* "On June 14, 2005, [Ms. Argoe] was notified of the hearing and the name of her court-appointed counsel." *Id.*

On June 21, 2005, pursuant to her appointment as an examiner, Defendant Bryant-Mobley presented her findings concerning Plaintiff's mental health to Judge Lawson. See Ex. 3, Bryant-Mobley Depo. pp. 100-01; see also Ex. 2, Bryant-Mobley Affidavit ¶ 6. At the hearing, Judge Lawson also considered the testimony of Ms. Argoe's family members, including testimony from her brother and her sister, and the testimony of Nurse Burrell. See Ex. 3, Bryant-Mobley Depo. p. 101. After considering testimony from Defendant Bryant-Mobley, Nurse Burrell, and Ms. Argoe's neutral family members, "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." *Argoe,* 392 S.C. at 467, 710 S.E.2d 67; see also Ex. 2, Bryant-Mobley Affidavit ¶ 7.

Because Ms. Argoe was refusing medications, on June 13, 2005 Defendant Bryant-Mobley asked for a second opinion and consulted with Dr. Heath, the medical director of the hospital, as to the appropriateness of forced medication administration in Ms. Argoe's situation.

Dr. Heath personally evaluated Ms. Argoe on June 14, 2005 and specifically noted her continued paranoia and hypomanic mood. See Ex. 3, Bryant-Mobley Depo. p. 86; see also Ex. 2, Bryant-Mobley Affidavit ¶ 5.

Defendant Bryant-Mobley provided complete and competent care and treatment to Ms. Argoe at Three Rivers until June 27, 2005 when co-Defendant Dr. Cheryl Dodds assumed Ms. Argoe's care. Ms. Argoe ultimately and voluntarily consented to taking her prescribed medications beginning on or about June 16, 2005. Ms. Argoe improved and became stable on her medication regimen and was discharged to live with her son on July 20, 2005. Defendant Dodds' discharge diagnosis was bipolar disease, manic with psychosis which was consistent with Ms. Argoe's initial diagnoses recorded by other evaluating and treating physicians. See Ex. 2, Bryant-Mobley Affidavit ¶ 8; see also Ex. 4, Dodds Affidavit.

Defendant Bryant-Mobley has not seen or treated Ms. Argoe since June 27, 2005 and was not involved in any subsequent Probate or Family Court hearings involving the Argoes. See generally, Ex. 2, Bryant-Mobley Affidavit.

PROCEDURAL HISTORY

On June 13, 2007, Ms. Argoe filed suit against her husband, son, the hospitals, physicians, and nurses involved in the involuntary commitment proceedings. Twelve causes of action were directed against Defendant Bryant-Mobley. In 2008, summary judgment was granted as to the causes of action against Defendant Bryant-Mobley for assault and battery, violation of S.C. Code Ann. Regs. 81.06(D), violation of HIPAA, defamation and invasion of privacy. Additionally, the causes of action against Defendant Bryant-Mobley for intentional infliction of emotional distress/outrage, false imprisonment, conspiracy and abuse of process were voluntarily dismissed by and through Plaintiff's counsel.

It is clear from the opinion issued by the South Carolina Supreme Court in *Argoe v. Three Rivers Behavior Health, LLC, et al.*, 392 S.C. 467, 710 S.E.2d 67 that the Court has found that Three Rivers was entitled to quasi-judicial immunity as it was treating the appellant pursuant to involuntary commitment order. This would be equally true for Three Rivers and Dr. Mobley, both of which were treating Ms. Argoe pursuant to an involuntary commitment order thereby giving rise to quasi-judicial immunity on behalf of Dr. Mobley.

Subsequently, on December 28, 2011, Plaintiff's Motion to Amend was granted, and the only remaining cause of action against Defendant Bryant-Mobley is for medical negligence as seen in the Second Amended Complaint. Based upon new information obtained through further discovery and the deposition of Ms. Argoe's expert, summary judgment must be granted in favor of Defendant Bryant-Mobley as she was acting pursuant to valid court Orders, she is entitled to quasi-judicial immunity due to her status as a court appointed examiner, and Plaintiff's expert failed to sufficiently establish the generally accepted standard of care applicable to this case and failed to demonstrate that Defendant Bryant-Mobley departed from such a standard.

LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.C.P. 56(c); *see also Helms Realty, Inc. v. Gibson-Wall Co.*, 363, S.C. 334, 611 S.E.2d 485 (2005). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548

S.E.2d 868, 874 (2001). A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (Ct. App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct. App. 1991), (citations omitted), rev'd in part on other grounds, 311 S.C. 218, 428 S.E.2d 700 (1993).

ARGUMENTS

I. DEFENDANT BRYANT-MOBLEY IS ENTITLED TO SUMMARY JUDGMENT IN HER FAVOR AS HER TREATMENT OF PLAINTIFF WAS AT ALL TIMES PURSUANT TO A LAWFUL ORDER OF EITHER THE ORANGEBURG COUNTY PROBATE JUDGE OR THE DARLINGTON COUNTY PROBATE JUDGE.

Dr. Bryant-Mobley admitted Ms. Argoe to Three Rivers in transfer from Aurora Pavilion pursuant to a valid[1] Order of Detention and Application for Involuntary Emergency Hospitalization for Mental Illness. Subsequently, on June 13, 2005 valid orders were issued by the Honorable Marvin Lawson, Judge of Probate, designating Dr. Bryant-Mobley to serve as a second designated examiner for Ms. Argoe and ordering continued hospitalization for Ms. Argoe until such time as a full evidentiary hearing could be held on June 21, 2005. See Ex. 5 & 6, Orders.

Ultimately, at the June 21, 2005 hearing, where Ms. Argoe had the benefit of counsel, Judge Lawson found that Ms. Argoe was mentally ill and lacked sufficient insight or capacity to make responsible decisions with respect to her treatment, and therefore, there existed a likelihood of serious harm to herself or others. The Judge ordered her continued treatment at Three Rivers and ordered outpatient treatment upon her discharge.

Further, the Commitment Order of Orangeburg County Probate Judge Jones-Glover, upon which Defendant Bryant-Mobley justifiably relied was independently reviewed by the

[1] See *Argoe v. Three Rivers Behavioral Health, et al.*, L.L.C., 392 S.C. 462, 710 S.E.2d 67 (2011) (holding the underlying commitment orders are valid).

Honorable Tiffany Provence, Judge of Probate, Dorchester County, in related proceedings to which Plaintiff was a party. The Dorchester County Probate Court ruled that Judge Jones-Glover's Commitment Order was proper. See Ex. 7, Order dated January 18, 2007, *In the Matter of Martha L. Argoe*, Dorchester Probate Court Case Number 2006-GC-18-00-045. In that Order, Judge Provence found that there were no violations of Plaintiff's rights under the Probate Code. Specifically, Judge Provence found that Plaintiff's involuntary commitment was handled in compliance with Probate Code §§44-17-410, -420, -430 and -570. Judge Provence's Order states, "The Court's review found that proper procedure was followed through each step of the involuntary commitment and that no grounds exist to challenge the previous Order of the Orangeburg County Probate Court with regards to that commitment." Additionally, Judge Provence found that there was no "improper release of information from [Plaintiffs] commitment file by her attorney or another Court." *Id.*

As Plaintiff did not appeal Judge Provence's Order, the doctrines of res judicata and collateral estoppel apply here. Under the doctrine of res judicata, a final judgment on the merits in a prior action will bind the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. *Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm'n*, 294 S.C. 9, 362 S.E.2d 176 (1987); *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). On appeal, the Court decisions bar subsequent relitigation of the same legal or factual issues already decided. *Foran v. USAA Cas. Ins. Co.*, 427 S.E.2d 918 (Ct. App. 1993). Therefore, Plaintiff is now barred from arguing that the June 6, 2005 Commitment Order was improper or that the actions and orders of Probate Judge Lawson subsequent to the Plaintiff's commitment were improper as Plaintiff was provided the opportunity to litigate those issues as well.

II. DEFENDANT IS ENTITLED TO ABSOLUTE QUASI JUDICIAL IMMUNITY AND THIS CLAIM MUST BE DISMISSED.

"If [an] individual is acting pursuant to a direct court order, courts are more likely to grant quasi-judicial immunity for that action." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 326, 566 S.E.2d 536 (2002). During all times relevant, Defendant Bryant-Mobley was acting pursuant to a valid order issued by the probate court, and thus, Defendant is entitled to quasi judicial immunity as a complete bar to all allegations set forth by Plaintiff.

In *Vaughn v. McLeod Reg'l Med. Ctr.*, the Supreme Court of South Carolina held that a doctor acting as a court appointed medical examiner in a guardianship proceeding was protected by common law absolute quasi judicial immunity in a negligence action stemming from his determination that a patient was permanently incapacitated. 372 S.C. 505, 642 S.E.2d 744 (2007). *See also Fleming v. Asbill*, 326 S.C. 49, 43 S.E.2d 751 (1997) (citing *Hartline v. Clary*, 141 F.Supp. 151 (D.S.C. 1956) (Judicial officers, quasi judicial officers, judges, prosecuting attorneys, executive and ministerial officials of the government are immune from civil suit for acts committed by them in the performance of their official duties)). Simply, the Court held that "[c]ourt appointed examiners are essentially an arm of the judiciary." *Vaughn*, 372 S.C at 512, 642 S.E.2d at 748. The Court stated as its basis for its determination that:

> Quasi-judicial immunity for acts performed within the scope of appointment is necessary to protect the Court appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the . . . proceedings. . . . [I]f [they] are not afforded immunity, the exposure to liability will have a chilling effect on future acceptances of such appointments.

Id.

As Defendant Bryant-Mobley was acting pursuant to valid Probate Court Orders which provided for Plaintiffs involuntary commitment, evaluation and treatment, this Defendant is afforded quasi-judicial immunity for any alleged claims arising from her acts pursuant to those

Orders regarding the commitment, evaluation and treatment of Plaintiff. Because quasi-judicial immunity protects the challenged acts and determinations by Defendant Bryant-Mobley in this case, summary judgment must be granted in her favor.

III. PLAINTIFF HAS FAILED TO PRESENT ANY EVIDENCE THAT DEFENDANT HAS DEVIATED FROM THE GENERAL STANDARD OF CARE.

Defendant Bryant-Mobley is entitled to summary judgment on Plaintiff's negligence claim as Defendant's medical treatment and assessment of Plaintiff was complete, competent, and performed within generally accepted psychiatric standards of care for treating patients under the same or similar circumstances. Because Plaintiff has failed to provide any evidence that Defendant deviated from the generally accepted standards of care, Defendant is in no way liable for Plaintiff's allegations set forth in the Second Amended Complaint.

Although the cause of action listed is not specifically stated as such, Plaintiff presents a claim for medical malpractice. In South Carolina, a "physician commits malpractice by not exercising that degree of skill and learning that is ordinarily possessed and exercised by members of the profession in good standing acting in the same or similar circumstances." *David v. McLeod Reg'l. Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) (citing *Durham v. Vinson*, 360 S.C. 639, 650-51, 602 S.E.2d 760, 766 (2004)). "[M]edical malpractice lawsuits have specific requirements that must be satisfied in order for a genuine factual issue to exist." *David*, 367 S.C. at 3, 602 S.E.2d at 247. Specifically, the plaintiff must submit evidence establishing

> (1) the generally recognized and accepted practices and procedures that would be followed by average, competent practitioners in the defendants' field of medicine under the same or similar circumstances, and
>
> (2) that the defendants departed from the recognized and generally accepted standards.

David, 367 S.C. at 4, 602 S.E.2d at 247-48 (citing *Pederson v. Gould*, 288 S.C. 141, 143-44, 341 S.E.2d 633, 634 (1986); *Cox v. Lund*, 286 S.C. 410, 414, 334 S.E.2d 116, 118 (1985)). Further, "the plaintiff must show that the defendants' departure from such generally recognized practices and procedures was the proximate cause of the plaintiff's alleged injuries and damages." *David*, 367 S.C. at 4, 602 S.E.2d at 248 (citing *Green v. Lilliewood*, 272 S.C. 186, 193, 249 S.E.2d 910, 913 (1978)). Additionally, in order to prove that any alleged deviation was the proximate cause of Plaintiff's alleged injuries and damages, "[t]he plaintiff must provide expert testimony to establish both the required standard of care and the defendants' failure to conform to that standard, unless the subject matter lies within the ambit of common knowledge so that no special learning is required to evaluate the conduct of the defendants." *David*, 367 S.C. at 4, 602 S.E.2d at 248 (citing *Penderson*, 288 S.C. at 143, 341, S.E.2d at 634). The present case is clearly not one that lies within the ambit of common knowledge as psychiatric assessment and care is a specialized and highly technical field within the medical profession. Thus, special learning is required to evaluate the conduct of the defendants, and the Plaintiff must rely on expert testimony to prove her medical malpractice claim.

"When one relies solely upon the opinion of medical experts to establish a causal connection between the alleged negligence and the injury, the experts must, with reasonable certainty, state that in their professional opinion, the injuries complained of **most probably** resulted from the defendant's negligence." *Ellis v. Oliver*, 323 S.C. 121, 125 (1996) (citing *Armstrong v. Weiland*, 267 S.C. 12, 225 S.E.2d 851 (1976) (emphasis added)). Therefore, when plaintiff can only rely on the testimony of an expert to establish proximate cause, the expert's testimony "must provide a significant causal link between the alleged negligence and the

plaintiff's injuries, rather than a tenuous and hypothetical connection." *Ellis*, 323 S.C. 121, 125 (citing *Green, supra.*, 272 S.C. 186, 249 S.E.2d 910).

The medical records in this case demonstrate that Defendant Bryant-Mobley clearly acted within applicable psychiatric standards of care in her evaluation of Ms. Argoe. Additionally, Defendant Bryant-Mobley's psychiatric concerns and impressions were confirmed and corroborated by Drs. Dodds, Desai and Heath and were consistent with the findings of Dr. Hooker. The Plaintiff's expert, Dr. Dave Davis, M.D., understands the impact of multiple medical opinions which are consistent with one another.

> Q. . . . [I]f two medical professionals assess a patient and they both come to the same provisional diagnosis, does that lend credence to that diagnosis?
>
> A. Certainly.

Ex. 8, Deposition of Dr. Dave Davis, M.D. pp. 121-22.

Not only does the Plaintiff's expert believe the confirmation and corroboration of Defendant Bryant-Mobley's impressions lend credence to the diagnosis of bipolar disorder, but Dr. Davis failed to identify ways in which Defendant Bryant-Mobley's assessment and treatment of Ms. Argoe lies outside applicable psychiatric standards. Plaintiff asserts throughout her pleadings that she was not a danger to herself and others and that Defendant Bryant-Mobley did not perform a complete and competent evaluation of her mental health status. These assertions, however, lack merit as even Dr. Davis testified that Defendant Bryant-Mobley could, within applicable standards, rely on information gathered from Plaintiff's family members and observe such family members with Plaintiff to verify the veracity of information provided.

Q. We talked and you talked some about involuntary commitments, my question is: If a doctor wants to involuntary commit someone, do they have to know that the patient will definitely harm somebody or is it just enough to know there's a risk that they will harm someone?

A. It has to be a substantial risk.

Q. And how is that determined?

A. By a good clinical examination of the patient, by a thorough examination documented in the record of how -- how is this person a substantial risk. [...]

Q. Okay. Can it also be based on the history from family or close - -

A. Sure. I mean, we're going to take in any information that you can get your hands on and put that in your equation, but the main thing is the examination of that person at the time now.[2]

See Ex. 8, Davis Depo. p. 118-19. Further, Dr. Davis was asked about techniques that Defendant Bryant-Mobley could use within the standard of care to verify the allegedly false information provided by Plaintiff's husband.

Q. Did you read [Defendant Bryant-Mobley's] deposition?

A. Yeah.

Q. Did you see where she talked about observing them together?

A. Observing who together?

Q. Mrs. Argoe and Mr. Argoe.

A. Not –

Q. You don't remember that?

A. No.

[2] Per the record, Defendant Bryant-Mobley performed a complete examination of Plaintiff upon her intake at Three Rivers, and Defendant Bryant-Mobley, along with other staff, examined Plaintiff and provided documentation of such assessments on a daily basis during Plaintiff's stay. See Ex. 3, Bryant-Mobley Depo. p. 92 & attachments.

Q. If she did observe them together, is that a way that she can try to verify the information?

A. Yeah.

See Ex. 8, Davis Depo. p. 137.

Pursuant to the accepted standards of care, Defendant Bryant-Mobley, as well as other doctors referred to herein, reasonably relied upon information presented by Plaintiff's family members that she always carried a gun on her hip and was paranoid. Further, Plaintiff expressed grandiose ideation to Defendant Bryant-Mobley by insisting that she had been trained to use the gun by the FBI. See Bryant-Mobley Depo. p. 73. Such information allowed Defendant Bryant-Mobley and others to reasonably believe that Plaintiff was a danger to herself and others. Moreover, Dr. Davis testified in support of the finding that Plaintiff was a danger to herself and others during all times relevant to this litigation.

Q. Assume for me that a person does have paranoia and delusions. Okay. If a person has paranoia and delusions and they have a gun, carry a gun, could they be a danger to themselves or others?

A. Sure. Anybody that carries a gun is a danger to themselves or others whether they're delusional or not.

Q. Are they more likely to be a danger to themselves or others if they carry a gun and they're delusional and paranoid?

A. Probably a little bit more.

See Ex. 8, Davis Depo. p. 130.

Finally, Dr. Davis opined that Defendant Bryant-Mobley did not properly "back up" her findings in various reports regarding Plaintiff's diagnosis or mental health status. See Ex. 8, Davis Depo. p. 122. Such an opinion, however, collides with Dr. Davis' testimony that not everything must be written down pursuant to the accepted standard of care in like or similar circumstances.

Q. Okay. We have talked or you have talked a good bit about the medical recordkeeping in this case. My question is: As far as the standard or medical recordkeeping, does it require the doctor to record everything that happens.

A. No.

See Ex. 8, Davis Depo. p. 119. Dr. Davis continued by stating the standard requires that the physician put in the record "pertinent data" about the reason for which the patient is being treated. Id. Dr. Davis failed to specifically define what "pertinent data" includes and that Defendant Bryant-Mobley's records concerning Plaintiff lacked the requisite pertinent data. See Ex. 8, Davis Depo. pp. 119-120. Therefore, Plaintiff has failed to present evidence that Defendant Bryant-Mobley's recordkeeping departed from the generally accepted standard of care.

Based upon the record and expert testimony in this matter, the Plaintiff has failed to present any evidence demonstrating that Defendant Bryant-Mobley deviated from the general standard of care in this case or that any alleged deviation "most probably" caused Plaintiff's alleged injuries.[3] "If the plaintiff is unable to demonstrate that the professional failed to conform to the generally recognized and accepted practices in his profession, **then the professional cannot be found liable as a matter of law**." *Pittman v. Stevens*, 364 S.C. 337, 341, 613 S.E.2d 378 (2005) (quoting *Doe v. Am. Red Cross Blood Serv.*, 297 S.C.430, 435, 377

[3] In his Affidavit, Dr. Davis does not sufficiently articulate a psychiatric standard of care in regards to the assessment by a Psychiatrist as to the need for emergency involuntary admission pursuant to a valid Order of Detention nor does he indicate with any specificity the data he relied on in arriving at his conclusory opinion that Ms. Argoe did not receive sufficient testing while committed to Three Rivers Behavioral Health. He appears to rely on the June 25, 2005 second opinion of Psychologist Tami Leonhardt which he admits was acknowledged by Three Rivers staff but opines in conclusory fashion that Ms. Leonhardt's opinion should supersede those of Drs. Bryant-Mobley, Dodds, Desai and Heath. At best Dr. Davis offers a simple difference in medical opinion but has not established in an appropriate fashion the applicable standard of care, a breach of this standard of care by Dr. Bryant-Mobley and has not offered any opinion as to how these alleged breaches proximately caused the Plaintiff's injuries. Additionally, Dr. Davis indicates in his deposition that a simple difference in medical opinion is a fairly common occurrence, and thus, such a conclusory opinion does not establish a departure from the standard of care. See Ex. 8, Davis Depo. p. 121.

S.E.2d 323, 326 (1989) (emphasis in original). Accordingly, summary judgment should be granted in favor of Defendant Bryant-Mobley.

CONCLUSION

For the reasons articulated above, Defendant Bryant-Mobley respectfully requests that all of Plaintiff's claims against Defendant Bryant-Mobley be dismissed and Defendant's Motion for Summary Judgment be granted.

Respectively submitted,

DAVIDSON & LINDEMANN, P.A.

BY: _____

WILLIAM H. DAVIDSON, II
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202
wdavidson@dml-law.com
(803) 806-8222

ATTORNEY FOR DEFENDANT PHYLLIS BRYANT-MOBLEY, M.D.

COLUMBIA, SOUTH CAROLINA

August 29, 2013

EXHIBIT 1
Hooker Affidavit

Argoe v. Three Rivers, et al.
2007-CP-32-1981

22. 1956

RECEIVED MAR 13 2008

STATE OF SOUTH CAROLINA **COUNTY OF LEXINGTON** Martha Lewin Argoe, Plaintiff, v. Three Rivers Behavioral Center, LLC and Psychiatric Solutions, Inc., It's Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker, M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III, Defendants.	)))))))))))))))))))))))	**IN THE COURT OF COMMON PLEAS** Civil Action No. 07-CP-32-1981 **AFFIDAVIT OF GLENN HOOKER, M.D.**

PERSONALLY APPEARED BEFORE ME, GLENN HOOKER, M.D., who first being duly sworn deposes and states as follows:

1

I am a licensed psychiatrist practicing in the Florence and Orangeburg areas of South Carolina.

2

That on June 8, 2005, pursuant an order of the Orangeburg County Probate Court (copy attached) I saw Martha L. Argoe at the Orangeburg Area Mental Health Clinic.

3

At the time I saw Ms. Argoe, I referred her to the Orangeburg Regional Medical Center for a complete workup which was performed in the Emergency Room at Orangeburg Regional Medical Center. This workup was related to me and was found to be within normal limits.

4

As part of my examination of Ms. Argoe, I went through and identified health issues concerning Mr. Argoe and noted same on the examination for emergency admission form which was dated June 8, 2005. At the time of my examination of Ms. Argoe, I also met with

her husband who sat in during my evaluation.

5

At that time I noted that Ms. Argoe's behavior had become problematic over the last year by testimony of her husband of 40 years and her son. I also was told that the patient had been spending a great deal of money, had been very secretive and accusatory and was going out late at night by herself flashing her jewelry and was taking no precautions with her behavior. It seemed to me at that time that the patient was having perhaps manic symptoms. I also felt that the patient was putting herself at risk of harm and when I discussed with her behavior, she showed no insight or awareness of the risks and the problems she was causing her family.

6

Based on this evaluation, I was of the opinion within a reasonable degree of medical certainty that Ms. Argoe currently possessed a substantial risk of physical harm to herself and that involuntary emergency hospitalization was required. For this reason, it was noted that Ms. Argoe should be referred to the Aurora Pavilion at Aiken Regional Medical Center for involuntary emergency admission. During this admission Ms. Argoe could be evaluated further to determine specific needs to address concerns about her behavior. After this review

and evaluation of her symptoms, I have had no further involvement with Ms. Argoe or her family.

FURTHER AFFIANT SAYETH NOT.

GLENN HOOKER, M.D.
SWORN TO BEFORE ME THIS 4TH
DAY OF March, 2008
George Watson
NOTARY PUBLIC FOR S.C.
COMMISSION EXPIRES: 9/17/2017

EXHIBIT 2

Bryant-Mobley Affidavit

Argoe v. Three Rivers, et al.
2007-CP-32-1981

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Martha Lewin Argoe,	)	
Plaintiff,	)	Civil Action No. 07-CP-32-1981
v.	)	
Three Rivers Behavioral Center, LLC and Psychiatric Solutions, Inc., It's Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker, M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.,	)	AFFIDAVIT OF PHYLLIS BRYANT-MOBLEY, M.D.
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, PHYLLIS BRYANT-MOBLEY, M.D., who first being duly sworn deposes and says that:

1. I am a Physician licensed to practice medicine in the State of South Carolina. I am Board Certified in General Psychiatry and Neurology. At the time of the matters alleged in the Complaint, I had privileges to provide psychiatric care to patients in the Three Rivers Center for Behavioral Health (Three Rivers).

2. Upon information and belief, by Order of the Orangeburg County Probate Court dated June 6, 2005, Ms. Argoe was involuntarily committed to the Aurora Pavilion at Aiken Regional Medical Center on June 8, 2005. I had no involvement in these proceedings. Because of Ms. Agroe's insurance coverage, she was transferred the following day to Three Rivers where I became Ms. Argoe's admitting and then attending Psychiatrist.

3. Pursuant to my initial psychiatric evaluation of June 10, 2005, it was my psychiatric opinion that Ms. Argoe was suffering from bipolar disorder I, with manic and psychotic features. Additionally, I was concerned that Ms. Argoe might also be suffering from obsessive compulsive disorder (OCD). I felt at that time her global assessment of functioning (GAF) score was 25. Such a score is indicative of behavior considerably influenced by delusions and impairment in judgment. (See Exhibit 1, attached hereto.)

4. Internist Dr. Nehal Desai evaluated Ms. Argoe at my request and also found symptoms consistent with paranoid ideation and bipolar disorder and noted these in his evaluation and assessment. (See Exhibit 1, attached hereto.)

5. Because Ms. Argoe was refusing medications, on June 13, 2005 I asked for a second opinion and consult with Dr. Heath as to the appropriateness of forced medication administration in Ms. Argoe's situation. Dr. Heath evaluated Ms. Argoe on June 14, 2005 and specifically noted her continued paranoia and hypomanic mood. It was his opinion that the benefits of forced treatment outweighed the possible risk and side effects. (See Exhibit 1, attached hereto.)

6. Pursuant to directions from the Probate Court, I examined Ms. Argoe as a designated examiner for mental illness. My findings were presented to the Darlington County Probate Court on or about June 21, 2005. Again, I found that Ms. Argoe was mentally ill and in need of involuntary treatment. Therefore, involuntary hospitalization was recommended as well as involuntary outpatient treatment following her hospital discharge once clinically stable. Upon information and belief, my medical opinions were considered by Judge Marvin Lawson, Probate Judge for Darlington County during a full hearing held June 21, 2005 regarding the issues surrounding Ms. Argoe's mental illness, involuntary commitment and treatment. (See Exhibit 1, attached hereto.)

7. Pursuant to the hearing of June 21, 2005, the Court ordered that Ms. Argoe be committed to a Mental Health Facility for inpatient care and treatment and ordered that upon discharge she was to follow-up with her local Mental Health Center for continued Court ordered outpatient treatment over a period of 12 months because Ms. Argoe was adjudged to lack insight and/or capacity to make reasonable decisions with respect to her treatment and because she was a danger to herself or others. (See Exhibit 1, attached hereto.)

8. I provided care and treatment to Ms. Argoe until June 27, 2005 when Dr. Cheryl Dodds assumed Ms. Argoe's care and may have briefly discussed Ms. Argoe and her care with Dr. Dodds. According to the Three Rivers' records, Ms. Argoe ultimately and voluntarily consented to taking her prescribed medications beginning on or about June 16, 2005. Ms. Argoe improved and became stable on her medication regimen and was discharged to live with her son on July 20, 2005. Ms. Argoe's discharge diagnosis was bipolar disease, manic with psychosis. This diagnosis is consistent with my initial assessment and observations during the time period that I provided care and treatment to Ms. Argoe prior to Dr. Dodds assumption of Ms. Argoe's care and her ultimate discharge from Three Rivers.

9. Even without the historical information provided by multiple sources regarding Ms. Argoe's pre-hospitalization actions, behavior and conduct, I still would have diagnosed Ms. Argoe with a mental illness based upon my examinations and observations of her while under my care at Three Rivers. Further, my findings and diagnoses were corroborated by Drs. Dodds, Heath and Desai.

10. I have not seen or treated Ms. Argoe since her discharge on July 20, 2005. I have not been involved in any subsequent Probate or Family Court hearings involving the Argoes since her discharge.

11. I have not released any of Ms. Argoe's mental health records to any third party, including any Probate or Family Courts, and have not released any information or opinions about Ms. Argoe's mental health or diagnoses except for the information and opinions provided to the Darlington County Probate Court in my role as a designated medical examiner and to Attorney James Walsh, Jr., for use by the Orangeburg County Probate Court in custodian and guardianship proceedings pursuant to that Court's Order appointing me a Physician Examiner for Ms. Argoe. (See Exhibit 1, attached hereto.)

12. I never spoke to or with any of the defendants named in the Lexington County and/or Beaufort County cases about Ms. Argoe's mental healthcare and treatment other than what is mentioned above and to obtain information regarding Ms. Argoe's symptoms from her husband and son and her brother and sister. I never spoke to or with any of the defendants or conspired with any of the defendants about helping Ms. Argoe's husband and son take real and personal property from Ms. Argoe or to secure insurance reimbursement for Ms. Argoe's medical treatment to enrich any defendant.

13. I did not violate any standards of medical or psychiatric practice in my care and treatment of Ms. Argoe that are a proximate cause of her alleged injuries and damages.

FURTHER AFFIANT SAYETH NOT.

Phyllis Bryant-Mobley, MD

PHYLLIS BRYANT-MOBLEY, M.D.

SWORN TO BEFORE ME THIS 16th

DAY OF APRIL, 2008

N & M Bowlt

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 1-17-2013

EXHIBIT 1

Initial Psychiatric Evaluation
June 10, 2005
Bates# 7456-N-045-046

Dr. Desai's Internal Medicine Examination
June 10, 2005
Bates# 7456-N-047-048

Dr. Heath's Medical Record Entry
June 14, 2005
Bates# 7456-N-086

Notification of Emergency Admission
Appointment of Designated Examiners
June 10, 2005
Bates# 7456-P-009-010

Report of Designated Examiner
June 16, 2005
Bates# 7456-P-005-006

Notice of Hearing &
Judgment and Order
Darlington County Probate Judge Marvin Lawson
June 21, 2005
Bates# 7456-P-011-013

Order Appointing Physician Examiner
Orangeburg County Probate Judge Jones-Glover
July 8, 2005
Bates# 7456-B-013

THREE RIVERS
for BEHAVIORAL HEALTH

ARGOE MARTHA L SS#
062 W F P MR#:000024396
Adm date: 2005-06-09 DOB
MOBLEY PHYLLIS I
Act#: 1018795

INITIAL PSYCHIATRIC EVALUATION

Patient Identification

HISTORY OF PRESENT ILLNESS AND SYMPTOMS (to support diagnosis and severity of illness):

62 yo married WF who per family has long been ill but has had no treatment. On commitment application application 2° psychotic and manic symptoms. Paranoid delusional, always accuse husband of sleep, insomnia, separate from bedroom with the door locked. Goes out late at night. Has been spending thousands amounts of money, owes utilities and medicaid.

JUSTIFICATION FOR 24 HOUR CARE (check all that apply):

- [ ] Inability to meet basic life and health needs
- [X] Dangerous to self, others, or property with need for controlled environment
- [ ] Toxic effect of therapeutic psychotropic drugs
- [ ] Failure of treatment at lower level of care
- [ ] Needs treatment for acute intoxication or withdrawal
- [ ] Biomedical conditions and complications requiring 24 hour medical and nursing care
- [ ] Need for ECT, special drug therapy, or other specific therapeutic program requiring continuous hospitalization
- [ ] Emotional or behavioral conditions and complications requiring 24 hour medical and nursing care
- [ ] High relapse potential due to inability to control substance abuse despite active participation in less restrictive care
- [ ] Recovery environment includes detrimental family
- [ ] Patient's occupation presents danger to public safety if they continue to use drugs or alcohol
- [ ] Failure of social or occupational functioning
- [X] Legally mandated admission
- [X] Impaired mood, depression, manic/mixed, suicidal ideation
- [X] Psychosis, hallucinations, delusions, disorganization
- [X] Cognitive function, orientation, judgment, insight
- [ ] Other (specify)

Believes house is bugged afraid of dirt, boards clothes. Pt. denies all, says husband is conceiving a tale accusing him of being physically and emotionally abusive alcoholic. Inst. only child, a son who is her power of attorney. Pt. refused to take meds at Lanier Pavilion from where she was transferred, but says if can [illegible] will take them voluntarily. Family gave an [illegible] for Ativan.

PAST PSYCHIATRIC HISTORY: None

ETOH AND SUBSTANCE HISTORY: None

PAST MEDICAL HISTORY: Hypertension, Hyperlipidemia, Hypothyroidism, Mild arthritis, Glaucoma

PERSONAL AND DEVELOPMENTAL HISTORY: No psychosocial assessment

AP #6892-1

7456-N-045
CONFIDENTIAL

MENTAL STATUS EXAMINATION: Smallish, attractive WF. Has a bit disheveled, otherwise casually and appropriately dressed. Pleasant & cooperative, good eye contact. Affect is expansive, euphoric. Speech brisk & pressured. Thought process logical & goal directed. Denies AH/VH but she is paranoid that to PO whether or not beliefs about husband are delusional. Denies SI/HI. A & O x 4. WORD = memory intact to all spheres. Avg. intelligence. Poor insight and judgment.

PATIENT ASSETS: Supportive Fam (POA) and husband

PATIENT LIABILITIES: Long hx illness & no treatment, lack of insight

PROVISIONAL DIAGNOSIS:

AXIS I: Bipolar I, Manic, Rapid Cycling, R/O OCD

AXIS II: deferred

AXIS III: None active

AXIS IV: Long hx illness & no treatment

AXIS V: 25

ESTIMATED LENGTH OF INPATIENT TREATMENT: 7-10 days

INITIAL DISCHARGE PLANS: ☒ HOME ☐ PLACEMENT ☐ OTHER

INITIAL TREATMENT PLAN: Admit for Crisis Stabilization, Med. stabilization and adjustment, Monitor and supportive group and individual therapy. Crisis Intervention with family conference. Discharge Planning will be to determine if family can continue to care for pt. for a month rather than having to be forced hospitalized (pt. is committed).

I believe this patient requires inpatient hospitalization. I do not believe this patient could be adequately and appropriately treated in a less restrictive environment. My decision is based on the preceding clinical information.

Phyllis Mollen, MD — PHYSICIAN'S SIGNATURE

6/10/05 10:32A — DATE/TIME

7456-N-046
CONFIDENTIAL

Three Rivers behavioral health

internal medicine history and physical exam

patient's name:Martha Argoe

Date: 6/10/2005

Chief Complaint: The sheriff came and got me

History of Present Illness: 62 year-old female is admitted on commitment papers secondary to several days history of increasing irritability, insomnia, confusion, paranoid ideation, bizarre behavior. Symptoms are progressively worse and severe. There is questionable prior psychiatric history, she is on no medications, denies significant medical history, denies alcohol or drug abuse. There are no other identifiable precipitators all modifiers. She denies associated chest pain, palpitations, shortness of breath, falls, head injury, seizures or syncope.

Review of systems:

Constitutional: No fever or chillsC, weight loss, change in appetite, evening temperatures or night sweats. Denies change in appetite or weight loss.
Eyes: No diplopia, floaters, vision changes or field defects.
ENT: No ear pain, discharge, change in hearing, nosebleeds, rhinorrhea, throat lumps, or pooling of saliva
CVS: No chest pain, palpitations, orthopnea, PND, edema, cyanosis or undue shortness of breath on exertion.
RS: No cough or shortness of breath, hemoptysis, expectoration or wheezing
GI: No dysphagia, nausea, vomiting or diarrhea, blood in stool, abdominal pain, change in bowel habits or tenesmus.
Endocrine: No polyuria, polydipsia, temperature intolerance or excessive sweating.
Skin: No rashes, pruritus, skin breakdown, whelps, erythema or raised lesions.
Neuro: No seizures, tremors, akinesia, rigidity, motor weakness, involuntary moments, tingling or numbness.
Musculoskeletal: No joint pains, muscle pains, joint swelling, change in range of motion or gait problems

Past Medical History: None

Past Surgical History: Hysterectomy, cholecystectomy, appendectomy

Family History: Heart disease

Social History: Denies alcohol, tobacco or drug use

Allergies: No known drug allergies

Medications: HRT, she is noncompliant

Vital signs: Temperature: 98.8 Respiratory rate: 16 Pulse: 90
Blood pressure: 136/80

Physical exam:

General: Alert and oriented times three, in no distress, appears in good physical health, ambulates without difficulty. Does display flight of ideas as well as pressured speech during interview.

7456-N-047
CONFIDENTIAL

MA

HEENT: Normocephalic, atraumatic head, pupils are equal round and reactive, sclera are anicteric, oral and nasal mucosa appears pink and unremarkable, there is no sinus tenderness.
Neck: Neck is supple, there is no thyromegaly or bruits, there is no JVD, trachea is central and there is no stridor, there are no carotid bruits, no palpable masses are appreciated.
Respiratory system: There is good air entry bilaterally, there is no wheezing, rhonchi or rales, there is no accessory muscle use.
Cardiovascular system: Rate is normal, rhythm is regular, and no murmurs, rubs or gallops. There are no thrills or palpable masses over chest. There are no abnormal heart sounds or clicks.
Gastrointestinal system: Abdomen is soft, nontender and nondistended. No hepatosplenomegaly is appreciated. No palpable masses are appreciated. There are no bruits on auscultation.
Lymph nodes: No lymph nodes are palpable in neck and axilla or groin
Neurologic System: Cranial nerves are grossly intact, no pathological reflexes are appreciated. No Babinski's bilaterally. No gross sensory or motor deficits are appreciated. Gait and speech are unremarkable.
Skin: There are no rashes, nodules or induration. There is no erythema or skin breakdown.
Genitourinary system: Patient denies any symptoms. This was deferred to primary care physician at patient's request.
Extremities: There is no cyanosis clubbing or edema. There are no local color or temperature changes. There is no muscle tenderness. Peripheral pulses are palpable.

Assessment and Plan:

1 paranoid ideation, bizarre behavior, irritability, insomnia, confusion, flight of ideas, pressured speech: This is consistent with a bipolar disorder. Recommend to check screening labs, rule out organic causes, establish etiology and treat accordingly.

N. Mo 6/10/05 am

Nehal Desai, examining physician, date and time.

Phyllis Mobley, MD
6/24/05 11:45 AM

7456-N-048
CONFIDENTIAL

THREE RIVERS FOR BEHAVIORAL HEALTH

PHYSICIAN'S PROGRESS RECORD

ARGOE MARTHA L SS#:
062 W F P MR#:000024396
Adm date: 2005-06-09 DOB
MOBLEY PHYLLIS
Act#: 1018795

PATIENT IDENTIFICATION

ADDRESS AS APPROPRIATE EACH OF THE FOLLOWING:

PROBLEM:
Diagnosed Condition
Presenting Complaint
Complication
New Management Problem
New Condition Present
Side Effects

EVALUATION:
Discussion with Patient
Consultation with Other Clinicians
Physical Examination
Discussion of Risk / Benefits of Medication
Formal Conference
Conference with Family / Review of Lab / Testing Results

ASSESSMENT / FINDINGS:
Patient Progress
Change in Sx. / Behavior
Change in Relationships
Change in Medical Status
Need for Continued Treatment
Necessity for Level of Care

THERAPEUTIC PLAN:
Medication
Laboratory Tests
Specialty Consultation
Psychotherapies
Group / Family / Individual
Change in Privilege Status
Discharge Planning

NURSING PROCESS DOCUMENTATION:
Patient Behavior
Interventions Provided
Patient Response to Interventions Plan

Date	Time	Prob.#	Disc	Progress Notes
9/13/2005	[illegible]			[illegible]

7456-N-086
CONFIDENTIAL

AP-#7027-1

941

STATE OF SOUTH CAROLINA)
COUNTY OF Darling)

IN THE PROBATE COURT

EX PARTE:)
G. Lewis Argoe)
(Applicant))

IN THE MATTER OF:)
Martha Argoe)
(A Person Alleged to be Mentally Ill))

NOTIFICATION OF EMERGENCY ADMISSION
APPOINTMENT OF DESIGNATED EXAMINERS

TO THE JUDGE OF PROBATE COURT FOR THE ABOVE-NAMED COUNTY:

YOU ARE HEREBY NOTIFIED:

(1) That the above-named Applicant filed an application for Emergency Admission alleging that the above-named person is mentally ill and because of such condition is likely to cause serious harm, as defined in Section 44-23-10(2), S.C. Code, 1976, as amended, if not immediately hospitalized.

(2) That the above-named person alleged to be mentally ill was examined by a licensed physician, whose Certificate is attached hereto.

(3) As a result thereof, he/she was admitted to Three Rivers
(NAME OF HOSPITAL OR FACILITY)

on the 9 day of June, 2005, in accordance with Section 44-17-410, S.C. Code, 1976, as amended.

NOW THEREFORE, pursuant to Section 44-17-410(3), S.C. Code, 1976, as amended, the undersigned has forwarded to you the Application and Certificate of Licensed Physician; and requests the appointment of the two designated examiners listed below:

Dated this 10 day of June, 2005.

Janet Holmes
(SIGNATURE OF MENTAL HEALTH REPRESENTATIVE)

Janet Holmes
(TYPED NAME)

THREE RIVERS CENTER FOR BEHAVIORAL HEALTH
(NAME OF INSTITUTION)
2900 SUNSET BOULEVARD
WEST COLUMBIA, SC 29169
(ADDRESS)

796 9921
(TELEPHONE)

FILED
05 JUN 13 PM 12:22
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

APPOINTMENT OF TWO DESIGNATED EXAMINERS

IT IS ORDERED that Phyllis Mobley, a licensed physician and Ann Burbell, RN shall examine the person alleged to be mentally ill. A report must be submitted to the Court within seven days from the date of admission as to the mental condition of said person alleged to be mentally ill and his/her need for treatment.

Dated this 13th day of June, 2005.

Darlington, South Carolina.

Maurice Gregory
JUDGE OF PROBATE COURT

7456-P-009
CONFIDENTIAL

SCDMH FORM
APR 69 (REV APR. 91) M-133 pg 1 of 2

STATE OF SOUTH CAROLINA)
COUNTY OF Darlington)

IN THE PROBATE COURT

EX PARTE:)
G. Lewis Argoe)
(Applicant)

IN THE MATTER OF:)
Martha Argoe)
(A Person Alleged to be Mentally Ill)

ORDER FOR CONTINUED HOSPITALIZATION AND FOR HEARING

Upon reviewing the Application for Emergency Admission, the Certificate of Licensed Physician, and the additional documents submitted by the treatment facility (if any) in this matter, I find in these documents evidence that the above-named person is mentally ill and in need of emergency hospitalization. Based on that evidence I determine that there is probable cause to continue the emergency detention of the above-named person pursuant to the provisions of Section 44-17-410, S.C. Code, 1976, as amended.

IT IS SO ORDERED:

That said person be detained at Three Rivers (NAME OF HOSPITAL OR FACILITY) until the 21st day of June, 20 05, at 9:15 o'clock, a. m., at which time ~~he~~/she will be brought before this court so that a full hearing into ~~his~~/her mental condition can be held.

Dated this 13th day of
June, 2005,
Darlington, South Carolina.

Marvin Dawson
JUDGE OF PROBATE COURT

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

IN THE PROBATE COURT

EX PARTE:)
_____)
(Applicant)

IN THE MATTER OF:)
_____)
(A Person Alleged to be Mentally Ill)

ORDER FOR RELEASE BASED ON NO PROBABLE CAUSE FOR EMERGENCY ADMISSION

Upon reviewing the Application for Emergency Admission, the Certificate of Licensed Physician, and the additional documents submitted by the treatment facility (if any) concerning the above-named person, I find that probable cause does not exist to continue the emergency detention of the above-named person pursuant to the provisions of Section 44-17-410, S.C. Code, 1976, as amended.

IT IS SO ORDERED:

That the Application herein be dismissed and that said person be released from the facility in which he/she is presently detained.

Dated this _____ day of
_____, 20_____,
_____, South Carolina.

_____
JUDGE OF PROBATE COURT

7456-P-010
CONFIDENTIAL

REPORT OF DESIGNATED EXAMINER FOR MENTAL ILLNESS

Name of Person Examined	Sex	Height	Weight	Age	Hair	Eyes	DOB	SS#	County of Residence
Martha Cuge	F			62					Berg

Place of Examination	Hour and Date of Examination
Blue Ridge	6/16/05 11 AM

Name of Designated Examiner	Degree	Place of Professional Employment
Phyllis Morley	MD	THREE RIVERS CENTER FOR BEHAVIORAL HEALTH 2900 SUNSET BOULEVARD WEST COLUMBIA, SC 29169

I, THE UNDERSIGNED EXAMINER, having been directed by Probate Court Order to do so, have examined the above-named person, considered previous hospitalization records and am of the opinion that the said individual:
(Check appropriate boxes.)

I. ☒ IS MENTALLY ILL, NEEDS INVOLUNTARY TREATMENT AND BECAUSE OF THIS MENTAL ILLNESS:

Lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment;

AND / OR

There is a likelihood of serious harm to self or others:

AND THEREFORE,

(1) ☐ INVOLUNTARY HOSPITALIZATION IS RECOMMENDED.

(2) ☒ INVOLUNTARY OUTPATIENT TREATMENT IS RECOMMENDED.

My recommendation is based on the following symptoms and specific examples of behavior:

Pt. continues to exhibit florridly psychotic symptoms, specifically extreme paranoia and delusional thinking. She has no insight in that does not believe she is ill. Just beginning to take meds voluntarily, adjustments to the same are continuing. Will need involuntary outpt. treatment once clinically stable.

05 JUN 20 A 11:20 CLERK OF COURT PROBATE COURT

(See reverse side which must be completed.)

All Information MUST be typed or clearly printed.

REPORT OF DESIGNATED EXAMINER FOR MENTAL ILLNESS

II. ☐ IS NOT MENTALLY ILL to such an extent that involuntary treatment is presently required.
My recommendation is based on the following observations and opinions:

My recommendation for additional treatment on a voluntary basis is:

Phyllis Mobley MD — 20798
SIGNATURE OF DESIGNATED EXAMINER — DEGREE — MEDICAL OR PROFESSIONAL LICENSE NO.

Phyllis Mobley, MD — 796-9911
TYPED OR PRINTED NAME OF DESIGNATED EXAMINER — PHONE NUMBER

THREE RIVERS CENTER FOR BEHAVIORAL HEALTH
2900 SUNSET BOULEVARD
WEST COLUMBIA, SC 29169

STREET ADDRESS — CITY — COUNTY — ZIP

NOTE: (1) "Mentally ill person" means a person afflicted with a mental disease to such an extent that, for his own welfare or the welfare of others or of the community, he requires care, treatment or hospitalization;

(2) "Likelihood of serious harm" means because of mental illness there is (1) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community;

All Information MUST be typed or clearly printed.

7456-P-006
CONFIDENTIAL

STATE OF SOUTH CAROLINA

COUNTY OF Darlington

IN THE PROBATE COURT

EXPARTE:

G. Lewis Argoe, Jr.
(Petitioner/Applicant)

IN THE MATTER OF:

Martha L. Argoe
(A Person Alleged to be Mentally Ill)

NOTICE OF HEARING
APPOINTMENT OF COUNSEL
APPOINTMENT OF GUARDIAN AD LITEM
APPOINTMENT OF DESIGNATED EXAMINERS

NOTICE OF HEARING

TO: **Petitioner/Applicant**	G. Lewis Argoe, Jr.
Person Alleged to be Mentally Ill	Martha L. Argoe
Counsel of Record	Alvin Neal
Guardian Ad Litem	Alvin Neal
Designated Examiners	Phyllis Mobley, M.D./Ann Burrell, RN
Other Interested Persons Known to the Court	George Argoe

YOU ARE HEREBY NOTIFIED that, based on the Petition or Application filed in this matter and upon the report of a designated examiner or certificate of licensed physician following an examination of the above-named person alleged to be mentally ill, finding that said person is mentally ill, a hearing will be held on the 21st day of June 20 05, at 9:15 o'clock a. m., at Three Rivers Center, W. Columbia, SC, for the purpose of taking testimony as to the mental condition of said person alleged to be mentally ill, at which you may appear, testify and within the discretion of the Court, present and cross-examine witnesses and have an opportunity to present to the Court any and all relevant and material evidence bearing on this matter, appearing either in person or by counsel.

YOU ARE FURTHER NOTIFIED that the person's detention at Three Rivers, a facility for the mentally ill, is based on conclusions and the underlying facts as contained in either the Petition for Judicial Admission and Report of Designated Examiner or the Application for Emergency Admission and the Certificate of Licensed Physicians, a copy of which is attached.

YOU ARE FURTHER NOTIFIED that you have the right to request the names of the designated examiners and such other persons who will be called to testify and the substance of their proposed testimony.

YOU ARE FURTHER NOTIFIED that it must be proved by the presentation of clear and convincing evidence that said person alleged to be mentally ill is mentally ill, needs treatment and because of his/her condition:

(1) Lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment; or

(2) There is a likelihood of serious harm to himself/herself or others.

APPOINTMENT OF COUNSEL

IT IS HEREBY ORDERED that Alvin Neal, Esquire, Attorney of the South Carolina Bar, is hereby appointed as counsel of and for the person alleged to be mentally ill and is hereby charged with all the duties, responsibilities, powers and privileges conferred and made incumbent upon an Attorney at Law in such cases. Provided, however, that should a privately retained counsel be obtained by or for the said person alleged to be mentally ill and this Court is so notified, then, in that event, the aforesaid Court-appointed counsel shall be discharged as counsel in this case.

7456-P-011
CONFIDENTIAL

APPOINTMENT OF GUARDIAN AD LITEM

IT IS ORDERED that Alvin Neal who is capable of understanding the rights of the person alleged to be mentally ill and who has no interest in conflict with or adverse to the rights of the person alleged to be mentally ill, is hereby appointed Guardian ad Litem of said person alleged to be mentally ill for the purpose of appearing for and acting on behalf of said person in all the proceedings herein, the said Guardian ad Litem having consented to act as Guardian ad Litem for said person alleged to be mentally ill for the purposes of the above-entitled action.

EXAMINATION BY TWO DESIGNATED EXAMINERS

IT IS ORDERED that Phyllis Mobley, M.D., a licensed physician and Ann Burrell, RN shall examine the person alleged to be mentally ill and report without delay to this Court their respective written findings as to the mental condition of said person alleged to be mentally ill and his/her need for treatment.

IT IS SO ORDERED.

Marion Ferguson (SEAL)
Judge of Probate Court

Dated this 14th day of June, 20 05

Darlington, South Carolina.

ORDER OF SUBSTITUTION

The corresponding appointments listed above are hereby rescinded by the following substitute appointments:

Counsel: _____

Guardian Ad Litem: _____

Designated Examiner: _____
(Licensed Physician)

Designated Examiner: _____

_____ Date

_____ Signature of Probate Judge

SCDMH FORM
REV OCT 80
MH-FCC-2

M-123B pg. 2 of 2

7456-P-012
CONFIDENTIAL

STATE OF SOUTH CAROLINA

COUNTY OF Darlington

IN THE PROBATE COURT

EX PARTE:

G. Lewis Argoe, Jr.
(Petitioner / Applicant)

JUDGEMENT AND ORDER

IN THE MATTER OF:

Martha L. Argoe
(A Person Alleged to be Mentally Ill)

After a full hearing on the issues involved herein and consideration of the testimony and record,

IT IS ORDERED AND ADJUDGED:

That the above-named person is mentally ill and,

(Strike through a., or b., or leave both if applicable.)

a. Because of ~~his~~/her mental condition lacks sufficient insight or capacity to make responsible decisions with respect to ~~his~~/her treatment; ~~xxxx~~ AND

b. Because of ~~his~~/her condition, there is a likelihood of serious harm to ~~him~~self or others, and therefore,

IT IS ORDERED

(Strike through the two which do not apply)

a. That said person be committed to a state mental health facility for in-patient care and treatment as provided in Section 44-17-580, S.C. Code, 1976, as amended. and following this,

b. That said person undergo an out-patient treatment program at ORANGEBURG COUNTY mental health facility for a period not to exceed 12 months. And, furthermore, that ~~this~~ the Court shall retain jurisdiction over said person to insure compliance with this Order, pursuant to Section 44-17-580, S. C. Code, 1976, as amended.

~~xxxThat it having been requested by _____ that said person be admitted to xx _____ where director has agreed thereto, the said person is ordered admitted to said hospital for care and treatment as provided for in Section 44-17-610, S. C. Code, 1976, as amended.xxx~~

Dated this 21st day of June, 20 05.

Judge of Probate Court (SEAL)

SCDMH FORM
REV FEB 95 M-122B
MH-FCC-2

7456-P-013
CONFIDENTIAL

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

PROBATE COURT

IN THE MATTER OF MARTHA L. ARGOE

CASE NUMBER 2005GC3800022

ORDER APPOINTING PHYSICIAN/EXAMINER

Upon reading the petition in the above matter, I hereby appoint Cheryl C. Dodds

and Phyllis Mobley

who are directed to report to this Court their findings as to the person's mental and physical condition, and their opinion as to the need for a guardian and/or conservator to be appointed.

Executed this 8th day of July, 19 2005

Pandora Jones-Glover

Pandora Jones-Glover, Probate Court Judge

NOTE TO EXAMINER:

Section 62-5-101 states: "Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property."

FORM #533PC (1/91)
62-5-303, 62-5-407

GRAPHIC PRESS 3631 Deluce Street West Columbia, South Carolina 29170 (803) 796-4207

7456-B-013

EXHIBIT 3

Bryant-Mobley Deposition Excerpts

Argoe v. Three Rivers, et al.
2007-CP-32-1981

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
2 COUNTY OF LEXINGTON) C/A #: 2007-CP-32-1981
3
Martha Lewin Argoe,)
4)
Plaintiff,)
5)
v.)
6)
Three Rivers Behavioral Health,)
7 LLC, and Psychiatric Solutions,)
Inc., Its Successor; Phyllis)
8 Bryant-Mobley, M.D.; Glenn Hooker,)
M.D.; Aiken Regional Medical)
9 Center; Aurora Pavilion; David A.)
Steiner, M.D.; Cheryl C. Dodds,)
10 M.D.; Doris Ann Burrell, R.N.,;)
and Carolina Care Plan,)
11)
Defendants.)
12)
13
DEPOSITION OF
14
PHYLLIS M. MOBLEY, M.D.
15 ********
16 Wednesday, May 16, 2012
10:15 a.m. - 2:39 p.m.
17
18
19 The deposition of PHYLLIS M. MOBLEY, M.D.,
20 taken on behalf of the Plaintiff at Creel Court
21 Reporting, 1230 Richland Street, Columbia, South
22 Carolina, on the 16th day of May, 2012 before Andrea
23 R. Taylor, Court Reporter and Notary Public in and
24 for the State of South Carolina, pursuant to Notice
25 of Deposition and/or agreement of counsel.

Draft Copy

1 APPEARANCES:
2 Robert D. Dodson, Esquire
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4 Rdodson@RdodsonLaw.com
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5
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Behavioral Health, LLC and Doris
9 N. Burrell, R.N.
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17 Attorney for the Defendants,
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18 and Glenn Hooker, M.D.
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23 Regional Medical Center and Aurora Pavilion
24
25

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8 Attorney for the Defendant,
Cheryl C. Dodds, M.D.
9
Noah M. Hicks, Esquire
10 THE LAW OFFICE OF NOAH M. HICKS, II, LLC
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11 Columbia, South Carolina 29202
chicks@nmhlawfirm.com
12 Attorney for the Defendant,
Carolina Care Plan
13
Also present:
14 Martha Argoe
Cheryl C. Dodds, M.D.
15 Renee Bouye, Carolina Care Plan
16

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25 Plaintiff's Exhibit Number Three 56
(Physician's Progress Record)

Draft Copy

1 was still not amenable to taking medications on
2 her own.
3 Q: What were her delusions during her
4 hospitalization that you observed? Not what
5 was reported to you by the family, but what
6 were her delusions that you observed?
7 A: I was concerned that she had grandiose
8 delusions based on the fact that she said that
9 she had been trained by the FBI to carry a gun.
10 The other delusions, yes, they were reported by
11 the family. But once again, I did not keep her
12 in the hospital just based on her delusions,
13 but her symptoms of mania as well. And those
14 were observed in the hospital by me and by
15 other staff.
16 Q: You wrote here, "Patient does have resources,
17 'is a woman of wealth and means.'" Why is that
18 clinically significant, Doctor?
19 A: That's clinically significant because above I'm
20 saying -- I'm making a statement that she's
21 demanding and grandiose, but I have to qualify
22 that just like with the delusions you have to
23 qualify whether they are based in truth or
24 based in fiction. Grandiose, there are some
25 things that she says that are clearly -- that

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1 you do to treat these three things?
2 A: I wanted to put Ms. Argoe on medication, but
3 she was not amenable to that. She was
4 committed so it would have been -- we could
5 have force medicated her, but I felt it prudent
6 to get a second opinion from another doctor as
7 to her symptoms and whether or not he or she
8 felt like the risks or benefits or force
9 medicating Ms. Argoe would be -- whether it
10 would be appropriate.
11 Q: And who was the second opinion from?
12 A: It was Dr. Charles Heath, who was the medical
13 director at the hospital.
14 Q: Did you -- after that second opinion, did you
15 force medicate Ms. Argoe?
16 A: I'm going to have to look at the orders. I
17 know we offered Ms. Argoe medication by mouth,
18 and I think there was a point in her treatment
19 where she was agreeable to that, and she took
20 it. I just need to find it in my notes. I had
21 ordered Risperdal Consta, which is an injection
22 which probably would have been force medicated
23 -- I mean, because she would not have been
24 agreeable to that, but Dr. Heath on his --
25 recommended that we try offering her Geodon,

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1 A: There's treatment programming in the hospital
2 where the patients received individual and
3 group therapy, but I did not -- my role in her
4 treatment was the medication management.
5 Q: So your role in her treatment was limited to
6 medication management?
7 A: Medication management and meeting with Ms.
8 Argoe every day to assess her status, meeting
9 with social workers, and nurses and those who
10 were also involved in her treatment to get
11 information as to how she was doing in the
12 hospital. But yes, my main role was the
13 management of her medications.
14 Q: During your individual meetings with Ms. Argoe,
15 were those meetings for diagnostic purposes to
16 determine what she had, or were those meetings
17 to provide her with essentially counseling and
18 care and treatment, or both?
19 A: They were mainly for diagnostic purposes.
20 Q: Now, you indicated there was individual and
21 group counseling; did I understand that
22 correctly?
23 A: Right, as a part of the -- as a part of the
24 programming from what I recall.
25 Q: Is that something that you recommended for her,

Draft Copy

1 others secondary to her paranoia and fear of
2 husband and the fact she always carries a gun
3 'to protect myself from him.' She has no
4 insight. Said in court she is not ill and will
5 not take medicine when discharged." And I go
6 on to say will discontinue Geodon administer
7 Risperdal Consta today and start Risperdal M-
8 Tab by mouth, Cogentin as needed, for any side
9 effects, extrapyramidal symptoms. "Family also
10 are in possession of patient's 'secret' cell
11 phone on which she's been receiving a lot of
12 restricted phone calls they suspect from people
13 advising patient against listening to family or
14 complying with medical advice. They know for
15 sure of one woman who is into demonic worship
16 with whom patient is in constant contact. Will
17 place patient on phone restriction at family's
18 request as this indeed may be counter-
19 therapeutic."
20 Q: All right. Now, you indicated in there a
21 danger to self and others. I heard that read
22 out. Did I understand that correctly?
23 A: Uh-huh (affirmative response.) Yes.
24 Q: And my question is this. Was that what you
25 told the court, or was that what the family

Draft Copy

1 relayed to the court, or both?
2 A: I don't recall. I know that I presented
3 testimony, but the family was also allowed to
4 speak at court. And the reason I say I don't
5 recall is because the day before when I saw Ms.
6 Argoe, I mean, she was -- you know, her manic
7 symptoms were improved and, you know, the only
8 remaining -- everything was improved except for
9 she still had these delusions. So I'm not
10 quite -- I can't recall what it was my
11 intention to present at court the next day,
12 whether or not I considered that she was a
13 danger to herself. But the court took into
14 account the family's testimony as well. So I
15 don't -- I don't recall what my testimony was
16 or what I had intended it to be. But it was
17 the judge who retained Ms. Argoe.
18 MR. COLE: Robert, excuse me a second. Could you
19 just tell us what Bates number you just into
20 the record.
21 MR. DAVIDSON: Seventy, 70 and 71.
22 MR. COLE: All right. Thank you.
23 Q: Have you ever seen a probate judge retain
24 somebody when you testified that they did not
25 need to be involuntarily committed?

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EXHIBIT 4

Dodds Affidavit

Argoe v. Three Rivers, et al.
2007-CP-32-1981

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Martha Lewin Argoe, Plaintiff, vs. Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., Its Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker, M.D.; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D., Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.; G. Lewis Argoe, Jr.; and George L. Argoe, III, Defendants.	)	Civil Action Number: 07-CP-32-1981 AFFIDAVIT OF CHERYL C. DODDS, M.D.

RECEIVED 08 MAR 19 PM 3:32 W.P.&B.,LLP ELDERLAW SERVICES D.S.C.,PA

PERSONALLY APPEARED before me, Cheryl C. Dodds, M.D., who being duly sworn, deposes and says that:

I am a physician licensed to practice medicine in the State of South Carolina. I am Board Certified in Psychiatry and Neurology. At the time of the matters alleged in the Complaint, I had privileges to provide psychiatric care to patients in the Three Rivers Center for Behavioral Health (Three Rivers).

Upon information and belief, by Order of the Orangeburg County Probate Court dated June 6, 2005, Ms. Argoe was involuntarily committed to the Aurora Pavilion at Aiken Regional Medical Center on June 8, 2005. I had no involvement in these proceedings. Because of Ms. Argoe's insurance coverage, the next day she was transferred to Three Rivers, where Phyllis Bryant-Mobley, M.D., was the admitting and

attending psychiatrist. Dr. Mobley's admitting diagnosis was "bipolar I, manic with psychotic features, rule out OCD".

Upon information and belief, on June 21, 2005, after a full hearing on the issues, the Darlington County Probate Court found Ms. Argoe to be mentally ill and a danger to herself or others. The Court ordered that Ms. Argoe be committed to a mental health facility for in-patient care and treatment and ordered that upon discharge she follow-up with her local mental health center for outpatient treatment for 12 months (a copy of the Order is attached). I was not involved in this Probate matter.

I did not provide care and treatment to Ms. Argoe until June 27, 2005, when Dr. Mobley went on vacation. According to the Three Rivers records, Ms. Argoe voluntarily consented to take her medications starting on June 16, 2005. When Ms. Argoe improved and became stable on her medications, I discharged her to live with her son on July 20, 2005. My discharge diagnosis was "bipolar disease, manic with psychosis" (a copy of my Discharge Summary is attached). Even without the history of Ms. Argoe's actions and conduct prior to her involuntary commitment to Three Rivers as told by Ms. Argoe's husband and son, I still would have diagnosed Ms. Argoe with a mental illness based upon my examinations and observations of her at Three Rivers.

On July 8, 2005, the Orangeburg County Probate Court appointed me as a physician/examiner and ordered me to report my findings about Ms. Argoe's mental condition and the need for a guardian and/or conservator to be appointed (a copy of the Order is attached). As ordered, I submitted to the Probate Court my Examiner's Report and Doctor's Affidavit Regarding Capacity (a copy is attached). At that time, I concluded from my treatment of Ms. Argoe that she was an "incapacitated person" and in need of a guardian and/or conservator based upon a mental illness. I stated in my

Affidavit that I was unable to determine at the time whether this condition was permanent or temporary. I did not testify in any Probate hearing regarding guardianship and conservatorship matters, and upon information and belief, my findings were not used by the Probate Court, because the Petitions for Appointment of a Conservator and Appointment of a Guardian were dismissed without a hearing.

I have not seen or treated Ms. Argoe since her discharge on July 20, 2005. I was not involved in any subsequent Probate or Family Court hearings or matters involving the Argoes.

I have not released any of Ms. Argoe's mental health records to any third party, including any Probate or Family Courts, and I have not released any information or opinions about Ms. Argoe's mental health diagnosis or treatment to anyone other than the Orangeburg County Probate Court, as ordered.

I never spoke to or with any of the Defendants named in the Lexington County and Beaufort County cases about Ms. Argoe's mental health care and treatment other than discussing it with Dr. Mobley. I never spoke to or with any of the Defendants or conspired with any of the Defendants about helping Ms. Argoe's husband and son take real and personal property from her or to secure insurance reimbursement for Ms. Argoe's medical treatment to enrich any Defendant.

I did not violate any standards of medical practice in my care and treatment of Ms. Argoe that are a proximate cause of her alleged injuries and damages.

SIGNATURE ON NEXT PAGE

Cheryl C Dodds MD

Cheryl C. Dodds, M.D.

SWORN to before me this
19th day of March, 2008.

Notary Public for South Carolina
My Commission expires:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

PROBATE COURT

IN THE MATTER OF MARTHA L. ARGOE

CASE NUMBER 2005GC3800022

ATTEST: A TRUE COPY

Judge of Probate, Orangeburg County, South Carolina

ORDER APPOINTING PHYSICIAN/EXAMINER

Upon reading the petition in the above matter, I hereby appoint Cheryl C. Dodds

and Phyllis Mobley

who are directed to report to this Court their findings as to the person's mental and physical condition, and their opinion as to the need for a guardian and/or conservator to be appointed.

Executed this 8th day of July, 19 2005

Pandora Jones-Glover

Pandora Jones-Glover, Probate Court Judge

NOTE TO EXAMINER:

Section 62-5-101 states: "Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property."

FORM 5300-G (1/91)
62-5-303, 62-5-407

GRAPHIC PRESS 3631 Deliver Street West Columbia, South Carolina 29170 (803) 796-4707

STATE OF SOUTH CAROLINA)
COUNTY OF: ORANGEBURG)
IN THE MATTER OF: Martha L. Argoe)

IN THE PROBATE COURT

EXAMINER'S REPORT

CASE NUMBER: 2006GC38000022

Please answer the following questions concerning the above person. Please provide details at the end of this form or an attached sheet of paper.

1. Have you treated this person before
   If yes, give brief history. — Yes ☐ No ☑
   Not prior to admission to Rivers

2. Has this person ever been rated or found:
   - disabled — Yes ☐ No ☐ Unknown ☑
   - mentally ill or incompetent — Yes ☐ No ☐ Unknown ☑
   - chemically dependent — Yes ☐ No ☐ Unknown ☑

3. Can the above person:
   - care for self (personal hygiene) — Yes ☑ No ☐ Unknown ☐
   - prepare meals and/or clean house — Yes ☐ No ☑ Unknown ☐
   - maintain bank accounts or funds — Yes ☐ No ☑ Unknown ☐
   - pay bills — Yes ☐ No ☑ Unknown ☐
   - live independently — Yes ☐ No ☐ Unknown ☑
   - operate a car — Yes ☐ No ☑ Unknown ☐
   - take medications unsupervised

4. Would the above person benefit from:
   - further education — Yes ☐ No ☑ Unknown ☐
   - further training — Yes ☐ No ☑ Unknown ☐
   - therapy of some sort — Yes ☑ No ☐ Unknown ☐
   - medical aids or equipment — Yes ☐ No ☑ Unknown ☐
   - an operation or medical procedure(s) — Yes ☐ No ☑ Unknown ☐
   - structured living arrangements — Yes ☑ No ☐ Unknown ☐

5. Has the above person had in the last six months:
   - hospitalization(s) — Yes ☑ No ☐ Unknown ☐
   - therapy or treatment — Yes ☑ No ☐ Unknown ☐
   - inpatient or outpatient surgery — Yes ☐ No ☑ Unknown ☐
   - major medical test(s) — Yes ☑ No ☐ Unknown ☐
   - psychological or psychiatric testing — Yes ☑ No ☐ Unknown ☐

6. In your opinion, does this person have the mental or physical capacity to effectively manage his/her property and financial affairs — Yes ☐ No ☑

   and /or make necessary daily living and health care decisions — Yes ☐ No ☑

FORM 8632PC (1/2004)
E2 5-303, 02-6-407

7. To your knowledge does this person have:

a power of attorney	Yes ☑	No ☐	Unknown ☐
a health care power of attorney or	Yes ☐	No ☑	Unknown ☐
a "living will"	Yes ☐	No ☑	Unknown ☐

8. Does the above person have any of the following coverages?

health insurance	Yes ☑	No ☐	Unknown ☐
medicare	Yes ☐	No ☑	Unknown ☐
medicaid	Yes ☐	No ☑	Unknown ☐
veteran's health care	Yes ☐	No ☑	Unknown ☐

9. Does this person have a primary caretaker? Yes ☐ No ☑ Unknown ☐
If yes, please give available information on name, address, and relationship to above person.

SWORN to before me this _____ day of

_____, 20 _____

_____
Notary Public for South Carolina

My Commission Expires: _____

Date: 7/11/05

C. Dodds M.D.
Examiner's Signature

Cheryl Dodds
Examiner's Name

Use this space for explanations or additional comments.

STATE OF SOUTH CAROLINA)
COUNTY OF: ORANGEBURG)
IN THE MATTER OF: Martha L. Argoe)

IN THE PROBATE COURT

DOCTOR'S AFFIDAVIT REGARDING CAPACITY

CASE NUMBER: 2005GC38000022

PERSONALLY APPEARED BEFORE ME Cheryl Dodds MD
Physician

who being duly sworn deposes and says:

I am (Please set forth your medical credentials): Psychiatrist (803) 791-1485

Business address and phone: 1904 Sunset Blvd Suite D Cola, SC 29169

Date and Place of this examination: 7/11/65 Three Rivers Behavioral Health

I have had previous opportunities to evaluate the patient? ☒ Yes ☐ No
(If yes, indicate dates and circumstances within the last year and/or reference if you have been the patient's personal physician for a period of time and the time frame.) I have been caring for patient in hospital for past 2 years

Is the patient oriented to time and place? ☒ Yes ☐ No

What is the physical condition and age of the patient? (Detail any other significant factors that may be relevant to the Court.) Physical health is good.

Set forth the results of any tests which bear on the issue of incapacity and date of test:

BASED UPON MY EVALUATION OF THIS PATIENT:

☐ I DO NOT believe this patient is an "incapacitated person". I do not find any impairment by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, property, or finances.

☒ I DO BELIEVE THIS PATIENT IS AN "INCAPACITATED PERSON" and in need of a Guardian and/or Conservator as I find him/her to be impaired by reason of (CHECK ALL THAT APPLY AND SET OUT AND DESCRIBE THE LIMITATIONS RESULTING FROM EACH.):

- ☒ Mental Illness
- ☐ Mental Deficiency
- ☐ Physical Illness or Disability
- ☐ Advanced Age
- ☐ Chronic Use of Drugs
- ☐ Chronic Intoxication
- ☐ Other

"Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. (Section 62-5-101 of the South Carolina Code of Laws)

Is this condition permanent or temporary? unable to determine at this time, but has not significantly improved with 4 weeks of medical treatment.

Can Patient perform activities of daily living? yes - but requires supervision to live independently.

What other information do you believe would assist the Court in making a determination of capacity? Additional history from family members.

FURTHER AFFIANT SAYETH NOT.

Physician's Signature: C Dodds

Print Name: Cheryl Dodds

Examiner: MD
Credentials (M.D., Ph.D., D.O., R.N.)

Address: 1904 Sunset Blvd
Suite D W. Col, SC 29169

Telephone: (803) 791-1485

SWORN to before me this 11th day of 20 05

Notary Public for South Carolina
My Commission Expires: My Commission Expires November 12, 2007

FAILURE TO PROVIDE DETAILED RESPONSES TO THE QUESTIONS ON THIS AFFIDAVIT MAY OBLIGATE YOU TO APPEAR AT THE PROBATE COURT HEARING.

All information MUST be typed or clearly printed.

EXHIBIT 5

Lawson Order dated June 13, 2005

Argoe v. Three Rivers, et al.
2007-CP-32-1981

9410

STATE OF SOUTH CAROLINA)
COUNTY OF O'Berry)

IN THE PROBATE COURT

EX PARTE:)
G. Lewis Argo)
(Applicant))

IN THE MATTER OF:)
Martha Argo)
(A Person Alleged to be Mentally Ill)

NOTIFICATION OF EMERGENCY ADMISSION
APPOINTMENT OF DESIGNATED EXAMINERS

TO THE JUDGE OF PROBATE COURT FOR THE ABOVE-NAMED COUNTY:

YOU ARE HEREBY NOTIFIED:

(1) That the above-named Applicant filed an application for Emergency Admission alleging that the above-named person is mentally ill and because of such condition is likely to cause serious harm, as defined in Section 44-23-10 (2), S.C. Code, 1976, as amended, if not immediately hospitalized.

(2) That the above-named person alleged to be mentally ill was examined by a licensed physician, whose Certificate is attached hereto.

(3) As a result thereof, he/she was admitted to Three Rivers
(NAME OF HOSPITAL OR FACILITY)

on the 9 day of June, 2005, in accordance with Section 44-17-410, S.C. Code, 1976, as amended.

NOW THEREFORE, pursuant to Section 44-17-410(3), S.C. Code, 1976, as amended, the undersigned has forwarded to you the Application and Certificate of Licensed Physician; and requests the appointment of the two designated examiners listed below:

Dated this 10 day of June, 2005.

Janet Holmes
(SIGNATURE OF MENTAL HEALTH REPRESENTATIVE)

Janet Holmes
(TYPED NAME)

THREE RIVERS CENTER FOR BEHAVIORAL HEALTH
2900 SUNSET BOULEVARD
WEST COLUMBIA, SC 29169
(INSTITUTION)

(ADDRESS)

796 9911
(TELEPHONE)

FILED
05 JUN 13 PM 12:22
MARY M. LAWSON
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

APPOINTMENT OF TWO DESIGNATED EXAMINERS

IT IS ORDERED that Phyllis Mobley, a licensed physician and Ann Bussell, RN shall examine the person alleged to be mentally ill. A report must be submitted to the Court within seven days from the date of admission as to the mental condition of said person alleged to be mentally ill and his/her need for treatment.

Dated this 13th day of June, 20 05,

Darlington, South Carolina.

Marvin Dawson
JUDGE OF PROBATE COURT

7456-P-009
CONFIDENTIAL

SCDMH FORM
APR 89 (REV APR. 91) M-133 pg. 1 of 2

STATE OF SOUTH CAROLINA)
COUNTY OF Darlington)

IN THE PROBATE COURT

EX PARTE:)
G. Lewis Argoe)
(Applicant)

IN THE MATTER OF:)
Martha Argoe)
(A Person Alleged to be Mentally Ill)

ORDER FOR CONTINUED HOSPITALIZATION AND FOR HEARING

Upon reviewing the Application for Emergency Admission, the Certificate of Licensed Physician, and the additional documents submitted by the treatment facility (if any) in this matter, I find in these documents evidence that the above-named person is mentally ill and in need of emergency hospitalization. Based on that evidence I determine that there is probable cause to continue the emergency detention of the above-named person pursuant to the provisions of Section 44-17-410, S.C. Code, 1976, as amended.

IT IS SO ORDERED:

That said person be detained at Three Rivers (NAME OF HOSPITAL OR FACILITY) until the 21st day of June, 20 05, at 9:15 o'clock, a. m., at which time he/she will be brought before this court so that a full hearing into his/her mental condition can be held.

Dated this 13th day of
June, 2005,
Darlington, South Carolina.

JUDGE OF PROBATE COURT

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

IN THE PROBATE COURT

EX PARTE:)
_____)
(Applicant)

IN THE MATTER OF:)
_____)
(A Person Alleged to be Mentally Ill)

ORDER FOR RELEASE BASED ON NO PROBABLE CAUSE FOR EMERGENCY ADMISSION

Upon reviewing the Application for Emergency Admission, the Certificate of Licensed Physician, and the additional documents submitted by the treatment facility (if any) concerning the above-named person, I find that probable cause does not exist to continue the emergency detention of the above-named person pursuant to the provisions of Section 44-17-410, S.C. Code, 1976, as amended.

IT IS SO ORDERED:

That the Application herein be dismissed and that said person be released from the facility in which he/she is presently detained.

Dated this _____ day of
_____, 20_____,
_____, South Carolina.

JUDGE OF PROBATE COURT

7456-P-010
CONFIDENTIAL

EXHIBIT 6

Lawson Order dated June 21, 2005

Argoe v. Three Rivers, et al.
2007-CP-32-1981

STATE OF SOUTH CAROLINA

COUNTY OF Darlington

IN THE PROBATE COURT

EX PARTE:

G. Lewis Argoe, Jr.
(Petitioner / Applicant)

JUDGEMENT AND ORDER

IN THE MATTER OF:

Martha L. Argoe
(A Person Alleged to be Mentally Ill)

After a full hearing on the issues involved herein and consideration of the testimony and record,

IT IS ORDERED AND ADJUDGED:

That the above-named person is mentally ill and,

(Strike through a., or b., or leave both if applicable.)

a. Because of ~~his~~/her mental condition lacks sufficient insight or capacity to make responsible decisions with respect to ~~his~~/her treatment; ~~or~~ AND

b. Because of ~~his~~/her condition, there is a likelihood of serious harm to ~~him~~self or others, and therefore,

IT IS ORDERED

(Strike through the two which do not apply)

a. That said person be committed to a state mental health facility for in-patient care and treatment as provided in Section 44-17-580, S.C. Code, 1976, as amended. and following this,

b. That said person undergo an out-patient treatment program at ORANGEBURG COUNTY mental health facility for a period not to exceed 12 months. And, furthermore, that ~~this~~ the Court shall retain jurisdiction over said person to insure compliance with this Order, pursuant to Section 44-17-580, S. C. Code, 1976, as amended.

~~That it having been requested by _____ that said person be admitted to _____ whose director has agreed thereto, the said person is ordered admitted to said hospital for care and treatment as provided for in Section 44-17-610, S. C. Code, 1976, as amended~~

Dated this 21st day of June, 20 05.

Marie Dawson (SEAL)
Judge of Probate Court

SCDMH FORM
REV FEB 95 M-122B
MH-FCC-2

7456-P-013
CONFIDENTIAL

EXHIBIT 7

Provence Order dated January 18, 2007

Argoe v. Three Rivers, et al.

2007-CP-32-1981

PROBATE JUDGE
DORCHESTER COUNTY
2007 JAN 18 PM 2:29

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF DORCHESTER) CASE NUMBER 2006-GC-18-00-045
)
IN THE MATTER OF)
Martha L. Argoe)
) ORDER

RECEIVED
2007 JAN 22 PM 2:32
H.P. & S. LLC
LEGAL SERVICES
OF SC, PA

BE IT REMEMBERED THAT THIS MATTER CAME BEFORE THIS COURT by and through a motion to compel. The Petitioner in that motion is Mr. Argoe with James Walsh, Jr. as his counsel.

The court denies the motion to compel the involuntary commitment records of Martha L. Argoe due to the fact that the information contained therein is protected by S.C. Probate Code §44-23-1100. After consideration of the exceptions provided by S.C. Probate Code §44-22-100, and a through and confidential review of the file, there is nothing contained therein that the Petitioner cannot obtain through other means including examination of documents already in their possession. The fact that the designated examiners who were treating the client during her admission were appointed by the court as a result of the Petition to Appoint a Guardian/Conservator, and filed information identical to and more in depth than what is contained in the involuntary commitment file makes the motion to compel moot.

By agreement of the parties, the court further reviewed the involuntary commitment file for determination of facts necessary to proceed with a future motion to vacate as filed with this court on September 29, 2006 by Mr. Jan Warner, attorney for Mrs. Argoe. The review was to determine whether or not there were any violations of Mrs. Argoe's rights under S.C. Probate Code §44-17-430, S.C. Probate Code §44-17-410(3), S.C. Probate Code §44-17-570, or S.C. Probate Code §44-17-420 as cited in the Motion to Vacate. The court's review found that proper procedure was followed through each step of the involuntary commitment and that no grounds exist to challenge the previous Order of the Orangeburg County Probate Court with regards to that commitment. Issues surrounding the use of the designated examiners in the Guardianship/Conservatorship proceedings

as a ground for a Motion to Vacate were not addressed at this time.

During the course of the hearing and with consent of the parties, the court also made a determination as to the status of the Conservatorship and Guardianship files. The status of each file is as follows:

The Conservatorship:

James Walsh, Jr., attorney for George Argoe, Jr. (husband of the protected person), filed the Summons and Petition for appointment of Conservator on June 7, 2005. The Petition requested that George Argoe, III (son of the protected person), be appointed conservator for Martha Argoe. On that same date, George Argoe III accepted Service of the Petition and James Jackson, Jr., was appointed the GAL for Martha Argoe in this matter. On July 8, 2005 Cheryl Dobbs and Phyllis Mobley, members of her treatment team at Three Rivers were appointed designated examiners in this matter. There is a question as to whether or not the selection of the examiners who were treating her during her commitment presents a conflict of interest under S.C. Probate Code §62-5-407(b).

On August 1, 2005, a letter was sent to attorney Walsh and James Jackson notifying them that a hearing was scheduled for September 28, 2005. At the request of the moving party, the hearing was terminated and an Order for Dismissal was signed by Judge Jones-Glover on February 9, 2006.

On April 12, 2006 a second Summons and Petition was filed by attorney Walsh on behalf of the husband, Mr. Argoe Jr., asking that the son, George Argoe, III, be appointed temporary conservator and that a protective order be issued for Mrs. Argoe. The court again requested two designated examiners to examine and report to the court on Mrs. Argoe's current condition. James Elmore and Charles Reamy were appointed as designated examiners from the Coastal Empire CMHC to examine Mrs. Argoe on March 30, 2006. Again, there is a possible conflict of interest in that these designated examiners were from the outpatient facility responsible for her current care.

On May 31, 2006, pursuant to S.C. Probate Code §62-5-408, Orangeburg County appointed George L. Argoe III as temporary conservator with restrictions including termination of this appointment after 45 days without a full hearing. At this time, no hearing was held, no notice was given, and no report from the designated examiners was received as they are not required for an emergency proceeding. The temporary Conservatorship expired 45 days later and a full hearing, including Mrs. Argoe was never scheduled.

The Guardianship:

James Walsh, Jr., attorney for George Argoe, Jr., also filed a Summons and Petition on July 11, 2005 requesting the court appoint George Argoe, III to be appointed as Guardian for his mother, Martha Argoe. Designated examiners and a GAL were already in place due to the Petition for Conservatorship (see above).

Orangeburg County appointed a temporary guardian, George Argoe, III on July 19, 2005 for the purpose of making certain medical decisions for Martha Argoe. The temporary guardian's appointment was to be terminated 45 days from the date of appointment. This appointment was issued on an emergency basis and was to be reviewed in 30 days pursuant to S.C. Probate Code §62-5-310(d).

On August 1, 2005, Orangeburg County Probate Court notified James F. Walsh and James B. Jackson that a hearing was scheduled for September 28, 2005 and for parties to file proof of service of Summons, Petitions and Notices of hearing. S.C. Probate Code §62-1-401.

On September 1, 2005, husband's attorney (Walsh) requested that the hearing be continued due to Mrs. Argoe's improved mental status. A note was attached requesting the court to hold the matter open for six months from the original appointment.

On January 23, 2006, six months from the original appointment, the file was closed and an Order was signed by Judge Jones-Glover which terminated the appointment of guardian due to the time expiring. Copies of this Order were sent to George Argoe, Jr., George Argoe III, and Attorney Walsh.

PROBATE JUDGE
DORCHESTER COUNTY

2007 JAN 18 PM 1:29

THEREFORE IT IS the Order of this Court that

The Motion to Compel be dismissed due to the fact that the information within has been deemed moot.

While Judge Jones-Glover had statutory authority in appointing a temporary Guardian and Conservator, once those appointments expired and no further action was taken, they were dismissed and/or administratively closed by the court.

There was no improper release of information from Mrs. Argoe's commitment file by her attorney or another court. The information obtained by the adverse party was a result of the appointment of her treatment team to serve as a designated examiner in a separate action seeking to have her declared incompetent. Whether or not this is a violation of Mrs. Argoe's rights or a violation of S.C. Probate Code §62-5-407(b) is not a matter before this court.

As of January 10, 2007, this court holds that any previous petitions for appointment of either Guardian or Conservator in this file are considered void and of no legal significance due to the fact that a full hearing on the issues, with notice to Mrs. Argoe and an opportunity for her to present her own evidence was never presented. Further actions to declare her incompetent will need to proceed with a new petition filed in this court.

IT IS SO ORDERED.

CERTIFIED TRUE COPY

Robin Waggoner

Robin Waggoner
Administrative Assistant
Dorchester Co. Probate Court

January 18, 2007
St. George, SC

T. Provence

Tiffany Provence, Judge of Probate

EXHIBIT 8

Davis
Deposition Excerpts

Argoe v. Three Rivers, et al.
2007-CP-32-1981

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE CIRCUIT COURT OF COMMON PLEAS

MARTHA LEWIN ARGOE, Plaintiff, vs. THREE RIVERS BEHAVIORAL CENTER, LLC, PHYLLIS BRYANT-MOBLEY, MD, AIKEN REGIONAL MEDICAL CENTER, DAVID A. STEINER, MD, CHERYL C. DODDS, MD. DORIS ANN BURRELL, RN, AND CAROLINA CARE PLAN, Defendants.	CIVIL ACTION FILE NO. 2007-CP-32-1981

DEPOSITION OF

DAVE DAVIS, M.D.

Thursday, May 30, 2013
9:00 a.m.

1776 Peachtree Street, N.W.
Suite 230-S
Atlanta, Georgia

Mona Landry, CCR-B-1514

APPEARANCES OF COUNSEL

On behalf of the Plaintiff:

ROBERT D. DODSON, Esq.
Robert D. Dodson
1722 Main Street
Suite 200
Columbia, South Carolina 29201
803-252-2600

On behalf of the Defendant:
Mobley:

JAMES M. DAVIS, JR., Esq.
Davidson & Lindemann, P.A.
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Second Floor
Columbia, South Carolina 29204
803-806-8222

On behalf of the Defendants:
Three Rivers & Burrell:

ANDREW N. COLE, Esq.
Collins & Lacy, P.C.
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On behalf of the Defendant:
Dodds:

JAMES E. PARHAM, Esq.
James E. Parham
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Post Office Box 1576
Irmo, South Carolina 29063
803-749-8555

On behalf of the Defendant:
Aiken Regional:

SHELTON W. HAILE, Esq.
Richardson, Plowden & Robinson, P.A.
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Post Office Drawer 7788
Columbia, South Carolina 29201
803-771-4400

On behalf of the Defendant:
Carolina Care Plan:

NOAH M. HICKS, II, Esq.
Law Offices of Noah M. Hicks, II, LLC
1722 Main Street
Suite 200
Columbia, South Carolina 29201
803-708-4842

On behalf of the Defendant:
Steiner:

ELLOREE A. GANES, Esq.
Hood Law Firm, LLC
172 Meeting Street
Charleston, South Carolina 29401
843-577-4435

- - -

1 questions right now, and I might come back later
2 and ask you more specifics about the tabs that
3 you have with the Three Rivers' documents, but
4 I'm going to let other people ask some questions
5 right now to move this along.
6 CROSS-EXAMINATION
7 BY MR. DAVIS:
8 Q. Dr. Davis, I'm Jim Davis and I'm here on
9 behalf of Dr. Mobley. And I'm going to try not to go
10 back through everything you've already testified to,
11 but I have a couple of general questions first.
12 A. Yeah.
13 Q. We talked and you talked some about
14 involuntary commitments, my question is: If a doctor
15 wants to involuntary commit someone, do they have to
16 know that the patient will definitely harm somebody or
17 is it just enough to know there's a risk that they
18 will harm someone?
19 MR. DODSON: I object to the form.
20 THE WITNESS: It has to be a substantial
21 risk.
22 Q. (By Mr. Davis) And how is that determined?
23 A. By a good clinical examination of the
24 patient, by a thorough examination documented in the
25 record of how -- how is this person a substantial

1 risk. For example, she's been threatening someone to
2 kill them. She's been threatening to kill herself or
3 she has tried to kill herself. She has tried to kill
4 someone. Certainly not; she's ever had thought of it
5 which means there's some risk, I guess, but...
6 Q. Okay. Can it also be based on the history
7 from family or close --
8 A. Sure. I mean, we're going to take in any
9 information that you can get your hands on and put
10 that at in your equation, but the main thing is the
11 examination of that person at the time now. It's not
12 the -- there was substantial risk two weeks ago.
13 Q. Okay. We have talked or you have talked a
14 good bit about the medical recordkeeping in this case.
15 My question is: As far as the standard or medical
16 recordkeeping, does it require the doctor to record
17 everything that happens?
18 A. No.
19 Q. Okay. What does it require? What does
20 the standard require?
21 A. The standard requires that -- we were
22 talking about this a minute ago -- that the physician
23 put in the record pertinent data about the reason this
24 person is being treated; in this case, being held
25 against her will, right? That's got to be in there.

1 Any changes in treatment plan which will include
2 medication and any, you might say, other collateral
3 data that's really pertinent to what's happening at
4 the time.
5 Q. Tell me what is --
6 A. Let me give you an example.
7 Q. Okay.
8 A. I'm not interested necessarily that the
9 patient's smoked marijuana 15 years ago. But the
10 patient's smoking marijuana last night in the
11 hospital, that would go in the notes. So it's a
12 pertinent current information, got to be in there.
13 Q. Okay. What is a definition of a
14 provisional diagnosis?
15 A. I'm still thinking about whether this is
16 the diagnosis or not. I'm going to put it down so I
17 can record it. Other people can note it. We're
18 considering this diagnosis, but we haven't made up our
19 mind yet.
20 Q. Is another way to say that a working
21 diagnosis?
22 A. Yeah, I think they -- they overlap.
23 They're not exactly the same term, but it's kind of,
24 you know, the same part of the room.
25 Q. Okay. What would be the difference

1 between them?
2 A. Provisional diagnosis, I think I'm still
3 working on it. I may not be treating it yet. But
4 then with a working diagnosis, probably going to want
5 to start some treatment.
6 Q. Okay. All right. Could either the
7 provisional or the working diagnosis change as you get
8 more information?
9 A. Yeah.
10 Q. And is that common?
11 A. Yes.
12 Q. Now, would you agree that two medical
13 professionals could assess someone and see the same
14 patient and determine or assess the patient
15 differently, have a different provisional diagnosis
16 for that patient?
17 A. You say could that happen?
18 Q. Sure.
19 A. Sure.
20 Q. Is that common that that happens?
21 A. Fairly common.
22 Q. Okay. On the flip side of that, if two
23 medical professionals assess a patient and they both
24 come to the same provisional diagnosis, does that lend
25 credence to that diagnosis?

1 A. Certainly.
2 Q. You have mentioned Dr. Mobley's name a few
3 times, but what I want you to do now is go ahead and
4 tell me what opinions you have of how Dr. Mobley
5 deviated from the standard of care --
6 A. Okay.
7 Q. -- there, if in any way.
8 A. All right. Let's take Plaintiff 00020.
9 Q. If you can just tell me what that is.
10 A. That is the report of designated examiner
11 for mental illness.
12 Q. Okay.
13 A. This date is 6/16/05. It states -- this
14 is Dr. Mobley's writing: "Patient continues to
15 exhibit floridly psychotic symptoms, mainly extreme
16 paranoia and delusional thinking."
17 I don't see anything to back that up.
18 Q. Okay.
19 A. That's a major deviation from the standard
20 of care.
21 Q. Okay. And just -- so?
22 A. It's -- florid means anybody can see it.
23 In other words, it would be obvious to anybody is
24 florid.
25 Q. Okay. So your -- just to make sure I

1 A. -- illegally, right?
2 Q. Okay. Do you know if there was any
3 indication that Dr. Mobley knew that?
4 A. No, I don't know.
5 Q. Let me ask you something about this.
6 A. Yeah.
7 Q. You were talking about her relationship
8 with her husband.
9 A. Uh-huh.
10 Q. Assume for me that a person does have
11 paranoia and delusions. Okay. If a person has
12 paranoia and delusions and they have a gun, carry a
13 gun, could they be a danger to themselves or others?
14 A. Sure. Anybody that carries a gun is a
15 danger to themselves or others whether they're
16 delusional or not.
17 Q. Are they more likely to be a danger to
18 themselves or others if they carry a gun and they're
19 delusional and paranoid?
20 A. Probably a little bit more.
21 Q. Okay.
22 A. But the odds on that are not high. The
23 odds are clear that if you carry a gun, you're much
24 more likely to get shot with it than if you don't
25 carry a gun. That, we know for sure. That's

1 A. Observing who together?
2 Q. Mrs. Argoe and Mr. Argoe.
3 A. Not --
4 Q. You don't remember that?
5 A. No.
6 Q. If she did observe them together, is that
7 a way that she can try to verify the information?
8 A. Yeah.
9 Q. Okay. Any other opinions that you have as
10 it relates to Dr. Mobley?
11 A. Now, I'm kind of interested in other
12 things she didn't check out. I mean, how is -- how is
13 Mrs. Argoe hyper religious? I spent pretty much time
14 with her one day, she never brought up anything about
15 her religion. I mean, how is it documented in here
16 that she's hyper religious? That's one of the things
17 Dr. Mobley used to say that she was mentally ill.
18 How? How is she hyper religious?
19 Q. You don't recall her saying anything about
20 how she was hyper religious?
21 A. I don't.
22 Q. Any other criticisms of Dr. Mobley?
23 A. How was she spending huge amounts of
24 money?
25 Q. Let me ask you this: As you mention those

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

FILED
2011 ... 24 A 8:55
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

COPY

Martha Lewin Argoe,

Plaintiff,

vs.

Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Centers, Inc., David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,

Defendants.

Civil Action No.: 2007-C[illegible]32-1[illegible]1

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

BACKGROUND

This case arises out of a scam and scheme by Martha Argoe's son and ex-husband who plotted to steal and convert her property, money and assets. The current Defendants to this medical malpractice case were a part of that scam and scheme because of their inept and incompetent practice of medicine and psychiatry.

Ms. Argoe is independently wealthy having inherited money and property from her parents. In 2004 and 2005, Ms. Argoe's husband, G. Lewis Argoe, Jr., was abusive and plotted to steal her assets. He hatched a plan to have Ms. Argoe involuntarily committed to a psychiatric inpatient facility where he and her son, George L. Argoe, III, would have free reign over her assets. More specifically, George L. Argoe, III, had power of attorney for Ms. Argoe and he was able to transfer valuable property from her name to his name.

The lynch pin to this scam and scheme were the Defendants. Each of the Defendants to this malpractice case participated in Ms. Argoe's care and treatment of her alleged psychiatric

and mental disorders. However, at the time of her involuntary commitment the Defendants did not properly test or evaluate Ms. Argoe for mental disorders; they confined Ms. Argoe for inpatient psychiatric treatment even though she was not a danger to herself or others; they forced her to take powerful psychiatric medication that she did not want or need; in short they acquiesced to her former husband and son's scam and scheme by failing to act as reasonably prudent physicians and nurses under like or similar circumstances.

PROCEDURAL HISTORY

The case now before this Court has a long history. In 2006, Ms. Argoe filed suit against the individuals responsible for her involuntary commitment and against the Defendants to this malpractice action. In 2007, she filed a second action in Lexington County naming additional Defendants. The two (2) lawsuits were combined under the current caption. In the lawsuits, Ms. Argoe sued the current Defendants, her former husband, her son, and his attorney. The cases against her former husband and son were settled. Some of the remaining Defendants moved for summary judgment, which was granted by this Court. This Court's Orders granting summary judgment sparked appeals to the South Carolina Supreme Court, which resulted in two (2) published opinions from the Supreme Court entitled Argoe v. Walsh 388 S.C. 394, 697 S.E.2d 551 (2010) (hereinafter Argoe I) and Argoe v. Psychiatric Solutions, Inc. 392 S.C. 462, 710 S.E.2d 67 (2011) (hereinafter Argoe II).

In Argoe I, the Supreme Court affirmed this Court's granting of summary judgment to attorney James Wall, who had represented Ms. Argoe's son and husband while they sought to implement their scheme and scam to take her property and assets. In Argoe II, the Supreme Court affirmed this Court's order granting summary judgment to Psychiatric Solutions on causes of action for false imprisonment, defamation and intentional infliction of emotional distress. The

current Defendants to this case now before this Court were not parties to the appeals in Argoe I or Argoe II. The claims and causes of action addressed by the Supreme Court in Argoe I and Argoe II were fundamentally different causes of action than those currently being pursued by Ms. Argoe.

During the pendency of the appeal, the case against the current Defendants was stayed. Upon remand from the Supreme Court, Ms. Argoe obtained a new attorney because her former attorney, Jan Warner, had died. Over the objections of Defendants, this Court issued an Order allowing the Plaintiff to amend her complaint against the remaining Defendants and the Plaintiff did so by making professional and medical malpractice claims against the current Defendants. During the discovery process on the medical and professional malpractice claims, the Plaintiff dismissed three (3) of the remaining Defendants: Psychiatric Solutions, Inc., Aiken Regional Medical Centers, Inc. and Carolina Care Plan. Therefore, the only remaining issues before this Court are whether the Plaintiff may proceed to trial against David A. Steiner, M.D., Phyllis Bryan-Mobley, M.D., Cheryl C. Dodds, M.D., Doris Ann Burrell, R.N. and Three Rivers Behavioral Health, LLC for medical malpractice/professional malpractice.

In their Motions for Summary Judgment, Defendants seek summary judgment on several grounds: 1. That Plaintiff has been unable to show that medical malpractice was the proximate cause of any injuries or damages; 2. That Plaintiff's claims are barred by the doctrines of *res judicata* and collateral estoppel; 3. That Plaintiff's claims are somehow barred under doctrines of absolute and quasi judicial immunity or that Defendants were acting under lawful authority or legal privilege.

ARGUMENT

I. Summary judgment should be denied because Plaintiff has named multiple experts who have opined that Defendants did not properly test, evaluate or treat the Plaintiff and that their failure to do so was the proximate cause of injuries and damages.

The crux of Ms. Argoe's medical malpractice claim against these Defendants centers around their misdiagnosis of her condition and their subsequent psychiatric treatment of her based on that misdiagnosis. According to Defendant Steiner, Ms. Argoe suffered from "psychosis, not otherwise specified (NOS)." Steiner Deposition, Exhibit 2. After Defendant Steiner saw her, he transferred her care and treatment to Defendants Mobley and Three Rivers. Mobley misdiagnosed the Plaintiff with suffering from bi-polar disorder with mania. Based on the misdiagnosis by Steiner and Mobley, Ms. Argoe was involuntarily committed to in-patient psychiatric treatment at Three Rivers. She was not allowed to leave the Three Rivers facility, she was forced to take powerful psychiatric medication that she did not want or need and in fact she wasn't even allowed to use the telephone while at Three Rivers.

In support of her claims, Ms. Argoe offered expert opinions from multiple mental health professionals including Dave Davis, M.D., a prominent psychiatrist in Atlanta. Dr. Davis' Affidavit was filed with this Court years ago and in his Affidavit Dr. Davis attested to the fact that Ms. Argoe was misdiagnosed by the Defendants and that reasonably prudent physicians and psychiatrists would not have diagnosed her as suffering from psychosis or bi-polar disorder. He also opined that Ms. Argoe should not have been involuntarily committed or forced to take psychiatric medications that she did not want or need. Dr. Davis' opinion was also supported by Frank Quinn, Ph.D., a psychologist in Columbia, and Lucinda Debruce, a registered nurse with an extensive work history with in-patient psychiatric facilities such as Three Rivers. Each of

these experts has opined that Defendants misdiagnosed Ms. Argoe and that Ms. Argoe did not need psychiatric in-patient treatment including forced medication.

In an effort to cover up their own malpractice and malfeasance, Defendants have attempted to hide behind the various orders of involuntary commitment by claiming that they had no choice but to hold Ms. Argoe against her will and force feed her psychiatric drugs because they were ordered to do so by the Probate Court due to the various orders of involuntary commitment that the Probate Court issued. Defendants' arguments are disingenuous, misleading and simply wrong.

The fatal flaw with Defendants reasoning is that nothing in any of the Probate Court's Orders mandated that Ms. Argoe be involuntarily committed for a specified period of time or any period of time. It was Defendants professional responsibility to properly assess Ms. Argoe and hold her involuntarily until she was no longer a danger to herself or other people. According to Plaintiff's expert, Defendant Steiner was the first professional who saw Ms. Argoe and he should and could have released her that day. See generally, Deposition of Dave Davis, M.D., pp. 23-24. Thereafter, each of the remaining Defendants had a medical duty to properly evaluate and treat Ms. Argoe. However, because Ms. Argoe was not suffering from a mental disorder and because she was not a danger to herself and others the proper treatment would have been to release her.

Involuntary commitments are not prison sentences. Rather, the involuntary commitment process is to be used to ensure that individuals suffering from a mental illness **AND** who are an imminent danger to themselves or other people are detained so that they do not hurt themselves or another person. However, it is up to medical professionals to properly and accurately diagnose mental disorders and appropriately treat those conditions. Most importantly, it is up to medical professionals to determine when an involuntarily committed patient is no longer a

danger to herself and/or others and timely release that patient. In exercising this duty, medical professionals are not required or mandated to return to the Probate Court to seek a Court Order before releasing a patient. Rather, they must release a patient based on their own clinical judgments regarding that patient's mental state.

Sadly for Ms. Argoe these Defendants failed in their medical duties to Ms. Argoe. They misdiagnosed her condition at the outset and treated her for a condition she did not have. They then detained her against her will despite the fact that their own assessments of her were that she was at a low to no risk of harming herself or other people. And, they forced powerful psychiatric medication into her body that she did not want or need. These were not actions the Probate Court mandated; these were actions that Defendants undertook using their own medical judgment; medical judgment that was flawed and without factual support according to Plaintiff's expert witnesses.

Defendants cannot hide behind the Orders of Probate Court as a shield for their own incompetence. The simple fact is that according to Plaintiff's experts, these Defendants had no basis for diagnosing Ms. Argoe as suffering from psychosis or bi-polar disorder and they should have promptly released her from involuntary commitment instead of forcing her to take drugs she did not want or need. Under such circumstances, summary judgment is not appropriate and must be denied.

II. Plaintiff's claims are not barred by the doctrines of *res judicata* and collateral estoppel by the Supreme Court's rulings in Argoe I and Argoe II because the appeals in those cases did not involve Plaintiff's claims against these Defendants for medical malpractice.

Defendants have moved for summary judgment on the grounds that the Plaintiff's claims for medical malpractice against them are barred under the doctrines of *res judicata* and/or collateral estoppel based on the Supreme Court's ruling in Argoe I and Argoe II. Defendants'

arguments are misguided, off base and wrong because neither Argoe I nor Argoe II address Plaintiff's claims for medical malpractice against these Defendants.

Argoe I related to Plaintiff's claims against an attorney for breach of fiduciary duty and legal malpractice. Argoe II involved causes of action against Psychiatric Solutions (who is no longer a party to this action) for false imprisonment, defamation and intentional infliction of emotional distress. These Defendants were not the appellant or respondent in either Argoe I or Argoe II. Moreover, the Supreme Court never addressed Plaintiff's claims for medical malpractice against these Defendants in either of those cases.

While the doctrines of *res judicata* and collateral estoppel are related, they are separate and distinct legal doctrines. For clarity, each doctrine and its application to this case is discussed separately below.

A. *Res Judicata*

Res Judicata is claim conclusion. "Res Judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence which was the subject of a prior action between those parties." Judy v. Judy, 393 S.C. 160, 172 712 S.E.2d 408, 414 (2011) (citations omitted) (emphasis added). "Res judicata's fundamental purpose is to ensure that no one should be sued twice for the same cause of action." Yelsen Landco v. State, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012) (citations omitted). "To establish res judicata, the Defendant must prove three (3) elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the formal suit." Nelson v. QHG of South Carolina, Inc., 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct App 2003) (citations omitted).

Defendants cannot satisfy the requirements for application of *res judicata*. First, the identity of the parties in Argoe I and Argoe II are not the same as the parties now before this

Court. While the Plaintiff was the same, these Defendants were not the appellant or respondent in Argoe I or Argoe II.

In addition, Defendants cannot satisfy the second criteria for application of the doctrine of *res judicata* because the "subject matter" in Argoe I and Argoe II was a fundamentally different subject matter than what is currently being litigated in this Court. Argoe I involved claims that Ms. Argoe made against James Walsh for legal malpractice and breach of fiduciary duty. Aroge II involved her claims against Psychiatric Solutions for false imprisonment, defamation and intentional infliction of emotional distress. Her claims against these Defendants for medical malpractice were never adjudicated or ruled on by the Supreme Court in Argoe I or Argoe II.

Finally, the application of *res judicata* is not proper because no court has ever adjudicated Ms. Argoe's claims for medical malpractice against the Defendants. In this regard, the pending Motions for summary judgment before this Court are simple matters: Ms. Argoe has not had her day in Court against these Defendants for medical malpractice. No Court, including the South Carolina Supreme Court or this Court, has ever addressed her claims of medical malpractice against these Defendants.

Accordingly, this Court must deny Defendants Motion for Summary Judgment based on the doctrine of *res judicata*. These Defendants are unable to show that any of the three (3) criteria necessary to invoke the doctrine of *res judicata* are satisfied and certainly all three criteria are not met. For these reasons, Defendants' motions fail and the Court should deny summary judgment.

B. Collateral Estoppel

Collateral estoppel is issue preclusion. The doctrine of collateral estoppel rests primarily on equitable principles. South Carolina Public Interest Foundation v. Greenville County, 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2012). "Under the doctrine of collateral estoppel once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim." Richburg v. Baughman, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986). "[The] Party asserting collateral estoppel must prove that the issue was actually litigated and directly determined in the prior action and that the matter of fact directly at issue was necessary to support the first judgment." Nelson *supra* at 354 S.C. 306, 580 S.E.2d at 769. (Citations omitted)(emphasis added).

Argoe I is simply not relevant or applicable to these claims because it involves claims for legal malpractice and breach of fiduciary duty against an attorney. In that case, the Supreme Court ruled that the Plaintiff could not proceed with those theories against attorney Walsh because Walsh was not her attorney (hence no attorney client relationship) and they ruled that even though he acted under the power of attorney he could not be sued for other causes of action either. However, it is important to note that nothing in that case had anything to do with Plaintiff's claims against these Defendants for medical malpractice.

Argoe II related to Plaintiff's claims against Psychiatric Solutions for false imprisonment, defamation, and intentional infliction of emotional distress. Psychiatric Solutions is no longer a party to this litigation having been voluntarily dismissed by the Plaintiff. Nonetheless, in the case against it that was heard by our Supreme Court, the Court ruled that the Plaintiff could not proceed against Psychiatric Solutions under causes of action of false imprisonment, defamation

and intentional infliction of emotional distress by challenging the validity of the Probate Court's Order involuntarily committing her for inpatient treatment.

In the case now before this Court, the Plaintiff is not seeking to challenge the validity of the Probate Court's Orders. Rather, her claims against these Defendants for medical malpractice acknowledge the validity of the Probate Court's various Orders but are based on the substandard care and treatment she received while involuntarily committed. More specifically, she claims that she should not have been detained as long as she was and she claims she should not have been forcibly medicated. While the Probate Court's Order required involuntary commitment, it was up to the remaining Defendant to determine what treatment was necessary and to determine when it was safe to release the Plaintiff. The Plaintiff's current claims against these Defendants are that they breached the standard of medical/psychiatric care by incarcerating her as long as they did and in requiring her to take medication that she did not need. Nothing in the Probate Court's Order required these Defendants to medicate the Plaintiff and nothing in the Probate Court's Order required the Defendants to detain and essentially incarcerate the Plaintiff when she was not a danger to herself or other people.

Regardless of any court order, it was the current Defendants who held the keys to the jail and to the medicine cabinet. It was the current Defendants who had an independent medical duty of determining when Ms. Argoe should have been released from her involuntary commitment and what treatment she should have received while she was involuntarily committed. Nothing in any Court order dictated how long Ms. Argoe was to have been detained and nothing in any Court order dictated the care and treatment she should have received while committed.

Unlike her claims for false imprisonment, defamation and intentional infliction of emotional distress, Ms. Argoe's current claims are not predicated on a theory that any court order

is invalid. Rather, her claims are predicated on the expert testimony of numerous experts, including a prominent psychiatrist, who opined that regardless of any court orders, the current Defendants had an independent medical duty to treat and care for Ms. Argoe within the applicable standard of care for reasonably prudent physicians and nurses. Plaintiff's experts have further opined that the current Defendants breached these duties by failing to adequately test and evaluate the Plaintiff. This failure to adequately test and evaluate the Plaintiff led to unnecessary and unreasonable treatment; treatment that included the equivalent of incarceration and the mandate that Plaintiff take psychiatric medication that was not warranted or needed.

The Supreme Court's Order in Argoe II never addressed these claims by the Plaintiff. Hence, summary judgment is inappropriate under the doctrine of collateral estoppel and must be denied by this Court.

III. The Plaintiff's claims for medical malpractice against these Defendants are not barred by the doctrine of judicial or quasi-judicial immunity nor are they barred under any other theory such as lawful authority or legal privilege.

In their Motions for Summary Judgment, Defendants contend they are entitled to summary judgment under the doctrines of judicial immunity, quasi judicial immunity, lawful authority and/or privilege. The essence of Defendants arguments is that the Probate Court's Orders and the fact that they participated in the judicial process related to Ms. Argoe's commitment entitles them to absolute and complete immunity as to the care and treatment (which fell below the accepted standard of care) which Defendants provided Ms. Argoe. Defendants' arguments are misguided because the care and treatment they rendered to Ms. Argoe was not a judicial act which qualifies for judicial immunity or quasi judicial immunity. In addition, the doctrines of lawful authority and privilege are not applicable because Ms. Argoe's

complaints against the Defendants are based on the care and treatment they rendered to her and are not predicated on the opinions they offered in Court against her.

A. Judicial Immunity and Quasi Judicial Immunity

Judicial immunity and quasi judicial immunity serve as a bar to litigation against judicial officers only in certain circumstances. Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007). Judicial immunity is not absolute. The bar against litigation under the doctrine of judicial immunity does not apply when the act complained of does not serve a judicial function. Defendants' Motions for summary judgment should be denied because the care and treatment they rendered to Ms. Argoe did not serve a judicial function.

In Faile v. S.C. Department of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002), the Supreme Court elaborated and explained this exception to judicial and quasi judicial immunity. In deterring whether an act is judicial in nature, the Court looks at the nature and function of the act complained of as opposed to the actor. In the case currently before this Court, Martha Argoe's complaints of medical malpractice are directed at the Defendants for the care and treatment they provided her while she was involuntarily committed. More specifically, Ms. Argoe complains that the Defendants did not appropriately test and diagnose her and therefore, did not appropriately treat her. In addition, they provided her treatment that was wholly and completely unnecessary and inappropriate (involuntary commitment and forced medication). Nothing in the law allows the Defendants to provide her with medical care and treatment outside the standard of care and to seek protection from their own malpractice through the doctrine of judicial quasi judicial immunity.

Defendants reliance on Vaughan v. McCloud Regional Medical Center, 372 S.C. 505, 642 S.E.2d 744 (2007), is misplaced. In Vaughan the Court held "A physician, who is a Court

appointed examiner in a guardianship proceeding, has absolute quasi judicial immunity for actions and opinions within the scope of the appointment." The Court's holding in Vaughan, however, did not go so far as to insulate physicians and psychiatrists for the actual care and treatment that they render. In this case, Ms. Argoe is complaining about the care and treatment she received from these Defendants. These Defendants did not properly examine and diagnose the Plaintiff. As a result of their own failures and misdiagnoses, they detained her and required that she take medication. Such care and treatment is outside the holding of Vaughan because it did not have "the nature and function of a judicial act." Faile *supra*. Rather, Defendants misdiagnosis of Ms. Argoe and their treatment of her based on that misdiagnosis was medical/psychiatric malpractice and was not a judicial act encompassed under the doctrines of judicial and/or quasi judicial immunity. For these reasons, the Court should deny Defendants Motions for summary judgment based on judicial and quasi judicial immunity.

B. Lawful Authority

Defendants also claim that they are entitled to Summary Judgment under the doctrine of lawful authority. In making this argument, Defendants rely principally on Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (Ct App 1987). In that case, a mother who threatened suicide and murder was involuntarily committed based on her suicidal and homicidal tendencies. She sued her family doctor and psychiatrists claiming false imprisonment, outrage and defamation for their roles in the commitment proceedings. In that case, the Circuit Court granted the Defendants' summary judgment and the Court of Appeals affirmed.

The case currently before this Court is distinguishable on several important grounds and Manley is simply not applicable to the claims currently being pursued by Ms. Argoe. First, Manley alleged causes of action for false imprisonment, outrage and defamation. The Manley

Plaintiff did not allege a cause of action for medical malpractice. Just as importantly, the Plaintiff in Manley "submitted no affidavit or other evidence in opposition to the Motion."

Ms. Argoe's case against the Defendants is fundamentally different than that in Manley. Ms. Argoe is challenging the care and treatment she received while committed. Unlike the Plaintiff in Manley, Ms. Argoe has submitted affidavits and deposition testimony which support her claims that the Defendants actions fell below accepted medical and psychiatric standards of care. Just as importantly, the facts and circumstances in Ms. Argoe's situation are fundamentally different than the facts and circumstances in Manley. Ms. Argoe never threatened to harm herself or anyone else, whereas the Plaintiff in Manley threatened to kill herself and her husband. In Manley, the Court of Appeals also noted that "the evidence is undisputed that the [Defendants] acted in good faith and in a reasonable manner." That is not the situation in this case now before this Court. To the contrary, Ms. Argoe's husband was abusive. Her son was trying to steal her property. In fact, while Ms. Argoe was involuntarily committed, he used power of attorney that he had for Ms. Argoe to transfer property from her name to his name. While Ms. Argoe's son and former husband were trying to steal her property and assets, the Defendants to this action were busy trying to unlawfully detain Ms. Argoe for involuntary commitment so they could milk money from her insurance company. In fact, according to Plaintiff's expert, Dr. Davis, the only reason Defendants had to keep Ms. Argoe involuntarily committed was for the money they were getting from her insurance company.

> Q: What is your opinion about that?
> A: I think they – I don't know. I think they were holding her for money, frankly.
>
> Q: Can you explain that to me? What do you mean?
>
> A: Well, I can't think of any other reason why they would keep her there.

Q: And who do you think was holding Ms. Argoe for the money?

A: I guess the doctors there, they're the ones who make the decision every day. Thay have to decide whether to keep this person in the hospital or not. For example, there's nothing in there that made me think she's going to hurt anybody or she's going to hurt herself. And that's what we have to decide every that we're holding somebody against their will. This is like holding somebody in a jail.

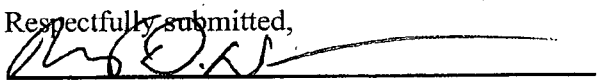
Deposition of Dave Davis, M.D. pp. 74-75.

The distinctions between Ms. Argoe's case and Manley are numerous. Those distinctions are important and dispositive to the issue now before this Court. Where the Plaintiff in Manley pursued causes of action for false imprisonment, outrage and defamation, Ms. Argoe is pursuing only a medical/psychiatric malpractice claim. Where the Plaintiff in Manley submitted no affidavits or anything in opposition to summary judgment, Ms. Argoe has produced affidavits and sworn testimony of multiple experts all of whom have attested to Defendants malpractice. And, where the Defendants in Manley acted "in good faith and in a reasonable manner" the Defendants in this action acted unreasonably and detained Ms. Argoe for their own greed and self interest. Under these circumstances and facts, Defendants' Motions for Summary Judgment must be denied.

CONCLUSION

For the foregoing reasons, Defendants' Motions for Summary Judgment must be denied by this Court.

Respectfully submitted,



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August 29, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT

Martha Lewin Argoe,	)	
	)	
Plaintiff,	)	Civil Action No.: 2007-CP-32-1981
	)	
vs.	)	
	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Centers, Inc., David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,	)	**SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
	)	
Defendants.	)	

The remaining Defendants' Motions for Summary Judgment must be denied by the Court because the decision as to when to discharge Ms. Argoe from involuntary commitment was a clinical, medical decision that did not require any type of Court approval or action. The remaining Defendants are not entitled to Summary Judgment under the doctrines of judicial or quasi-judicial immunity because their decision to discharge Ms. Argoe (or failure to discharge her) was not related to a judicial act but was rather a matter of clinical, medical judgment. None of the remaining Defendants had to seek Court intervention before releasing the Plaintiff.

In Vaughan v. McLeod Regional Medical Center, 372 S.C. 505, 512, 642 S.E.2d 744, 748 (2007) the Court held: "a physician who is a court-appointed examiner in a guardianship proceeding, has absolute quasi-judicial immunity for actions and opinions within the scope of the appointment." (emphasis added). Assuming that holding can be applied in the context of involuntary commitments, this holding by the Supreme Court does not apply in this case because the action (or inaction) to discharge Ms. Argoe "was not within the scope of the appointment."

Rather, it was based on the medical judgment of the Defendants. Even one of Defendants own experts acknowledged as much. In her deposition, Three Rivers' expert explained that the decision to discharge Ms. Argoe from involuntary commitment was a medical decision that required no Court intervention or Court involvement of any kind.

Q: Why is it that Dr. Dodds was able to discharge Ms. Argoe on her own?

A: Well, she had already been committed. Once you have the civil commitment proceedings, and if the person is retained by the probate judge, after that point, the authority is given to the doctor to release whenever. And so, yes, a lot of my discharges are exactly that circumstance. The person has been seen by probate, they were retained until the hospital and the staff determined the patient was safe to be at large.

Q: Is it fair to say that once the probate court has issued an order of involuntary commitment, that the treating physician has the authority to discharge that patient when medically appropriate.

A: That's correct.

Q: You do not have to go back to the probate court for an order before that?

A: Not at all. .....

(Deposition of Donna Marie Schwartz-Watts, M.D., p 21, line 25; p. 22, lines 1-17).

Later in Deposition, Dr. Watts testified:

Q: Now, after a patient goes through the probate hearing on involuntary commitment and the judge issues an order of involuntary commitment, is it up to the treating physician, then, to determine when to discharge the patient from involuntary commitment, unless there's something specific in the judge's order?

A: Yes, sir.

Q: And is that a clinical medical decision that the physician makes?

A: Yes. And sometimes a social worker will play a part. There are sometimes when the clinician – I have few cases right now where the person's better, but there's nowhere for them to go. And so, sometimes it becomes a social work issue, as well, for placement. But yes, it's usually ---

Q: So, just as a surgeon would make a decision about when it's appropriate to discharge somebody from the hospital after surgery, a psychiatrist would make a decision medically about when it's okay to discharge a patient from involuntary commitment after the probate process?

A: Sure.

Q: And you don't need a judge for that?

A: No.

Q: You don't need to go back to court for that?

A: No.

Q: That was not done in Ms. Argoe's case?

A: That's correct, not that I saw.

Mr. Cole: Object to form.

Q: Dr. Dodds made the decision about when to discharge her, correct?

A: Based on the records that I've seen, yes.

Q: And at any point, Dr. Dodds could have made that decision when she became involved in her care and treatment, couldn't she?

A: Sure.

Q: And after the probate hearing, you would agree with me that Dr. Mobley could have also discharged her?

A: Had she wanted to, sure. Sure. She was still there, I think, for a few days after the probate hearing.

(Deposition of Donna Marie Schwartz-Watts, M.D., p 69, line 25; p. 70, lines 1-25; p. 71, lines 1-15).

Defendants cannot credibly claim judicial and quasi-judicial immunity when one of their own experts testified that the decision to discharge Ms. Argoe was a medical decision outside of

the probate court/involuntary commitment legal proceedings.[1] At its most basic, the doctrine of quasi-judicial immunity is designed to protect those acting as an arm of the judiciary. But in this case, Mobley, Dodds and Three Rivers' decision as to when to discharge Ms. Argoe was not a decision made as an arm of the judiciary. Rather, it was a decision made in the practice of medicine. The doctrine of quasi-judicial immunity protects judicial and quasi-judicial acts but the doctrine does not extend so far as to completely insulate doctors who commit malpractice simply because their care and treatment of patient started as part of a judicial process.

When carried to its logical end, it is easy to see how Defendants' position creates an unworkable and unjust rule of law. The Probate Court's hearing was on June 21, 2005. From that point forward, Defendants and their experts concede that the decision to release Ms. Argoe rested on the remaining Defendants to this action. Nonetheless, they maintain they are entitled to quasi-judicial immunity as it relates to their decision about when to release Ms. Argoe. Carried to its logical end and based on Defendants' arguments, Defendants could hold Ms. Argoe for involuntary commitment for the rest of her life and still be protected by the doctrine of quasi-judicial immunity. Admittedly, that did not happen in this case. Nonetheless, the rule of law advocated by Defendants would result in nothing short of a judicial license to bad doctors to hold involuntarily committed patients in perpetuity knowing that they have no liability for their action, even when that action is outside the standard of care for physicians and nurses.

As a matter of fact and as a matter of law, Dr. Dodds position that she be granted Summary Judgment based on the doctrines of judicial and quasi-judicial immunity is even more untenable. More specifically, Dodds was never a Court appointed examiner. The Probate Court

[1] Plaintiff's expert testified repeatedly at deposition that in his opinion at any point during her stay at Three Rivers' Dr. Mobley and Dr. Dodds could and should have discharged Ms. Argoe. His opinion was and is that nothing in the probate court process dictated the standard of care to the physicians.

never directed that Dodds examine, treat or involuntarily commit Ms. Argoe. When Dodds eventually discharged Ms. Argoe, she never sought or received Court intervention for this action because she didn't need Court intervention to release Ms. Argoe. In short, Summary Judgment should also be denied to Dodds because at no point was she ever acting as an arm of the judiciary and her decision to release Ms. Argoe did not require any judicial approval or oversight.

The same is also true for Three Rivers. The undisputed evidence in this case is that Three Rivers voluntarily agreed to accept Ms. Argoe as a patient because they were a preferred provider by her insurance company and Aiken Regional/Aurora Pavilion was not a preferred provider. However, the Probate Court never dictated that Ms. Argoe be seen on the weekend or for a second opinion by its medical director, Dr. Heath, who would fill in on the weekends for Mobley and Dodds and who also provided a second opinion.[2] Nor did the probate court dictate which nurses treat Ms. Argoe while she was committed to Three Rivers.

Simply because the judiciary starts a process that results in medical care and treatment of a patient does not mean that everything that follows after that is subject to the doctrine of judicial or quasi-judicial immunity. For example, the judiciary routinely sentences criminals to prison. In prison, their medical care and treatment must be provided by the State. Nonetheless, prison doctors are not entitled to quasi-judicial immunity for their malpractice because their care and treatment was provided secondary to a judicially imposed prison sentence.

Similarly, the judiciary in this State appoints lawyers to represent indigent clients in the Family Court and in General Sessions. Nonetheless, those lawyers are not insulated from their own legal malpractice simply because they are Court appointed. The same reasoning and logic

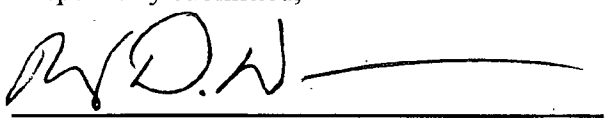
[2] In her deposition at pages 79 and 86, Mobley testified that Dr. Heath provided a second opinion and that he was the Medical Director of Three River. Mobley also testified at page 86 of her deposition that Dr. Heath played a part in providing treatment to Ms. Argoe. Medical records identified at Dodds' at deposition and made Exhibit 2 show Ms. Argoe was seen by Dr. Heath on June 13, 14, 24, and 26; July 2, 3, 4, 16, and17. Accordingly, Three Rivers is vicariously liable.

applies to the facts in this case: Simply because the Probate Court appointed Mobley as a designated examiner does not insulate Mobley from the care and treatment she provided – care and treatment that was not mandated, dictated, or controlled by the Probate Court.

CONCLUSION

For the foregoing reasons, Mobley, Dodds and Three River's Motions for Summary Judgment must be denied by this Court.

Respectfully submitted,



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October 7, 2013
Columbia, South Carolina

1 Argoe on her own?
2 A Well, she had already been committed. Once you have
3 the civil commitment proceedings, and if the person is
4 retained by the probate judge, after that point, the
5 authority is given to the doctor to release whenever.
6 And so, yes, a lot of my discharges are exactly that
7 circumstance. The person has been seen by probate,
8 they were retained until the hospital and the staff
9 determined the patient was safe to be at large.
10 Q Is it fair to say that once the probate court has
11 issued an order of involuntary commitment, that the
12 treating physician then has the authority to discharge
13 that patient when medically appropriate?
14 A That's correct.
15 Q You do not have to go back to the probate court for an
16 order before that?
17 A Not at all. Every once in a while, there might be - in
18 Richland County, I know they do this. They haven't
19 done this in Anderson yet, but Judge Moody, for
20 example, in Richland County or Judge Clemmons,
21 sometimes they will put very specific orders and say
22 you have another hearing before we release them. But
23 unless there's another order superseding that, no, we
24 can discharge when we deem appropriate.
25 Q Okay. Have you ever been a party to a lawsuit, either

1 think, was a mood stabilizer?
2 A Yes.
3 Q What are those?
4 A Lithium, Depakote, Lamictal. Those are the three.
5 There's many, many of them, but those are the most -
6 I'll give you the most commonly used.
7 Q Lithium, Depakote and what else?
8 A Lamictal.
9 Q Lamictal?
10 A L-a-m-i-c-t-a-l.
11 Q You can get that down. All right. Now, and you
12 mentioned a first category.
13 A The anti-psychotics, yes.
14 Q And what are those?
15 A Very similar to some of the medications Ms. Argoe -
16 Seroquel, Risperadone, Haldol, Thorazine. There's
17 many. Invega. There's many, many. There are probably
18 about 15 of those different kinds of medications.
19 Q So, are Haldol and Risperadol used together?
20 A Some people, I guess it's just the art of medicine.
21 Very few occasions, I will use two neuroleptics
22 together. I've got some patients right now. It
23 happens, but I think that's probably up to the
24 individual practitioner how often you do that.
25 Q Now, after a patient goes through the probate hearing

1 on involuntary commitment and the judge issues an order
2 of involuntary commitment, is it up to the treating
3 physician, then, to determine when to discharge the
4 patient from involuntary commitment, unless there's
5 something specific in the judge's order?
6 A Yes, sir.
7 Q And is that a clinical medical decision that the
8 physician makes?
9 A Yes. And sometimes a social worker will play a part.
10 There are sometimes when the clinician - I have a few
11 cases right now where the person's better, but there's
12 nowhere for them to go. And so, sometimes it becomes a
13 social work issue, as well, for placement. But yes,
14 it's usually ---
15 Q So, just as a surgeon would make a decision about when
16 it's appropriate to discharge somebody from the
17 hospital after surgery, a psychiatrist would make a
18 decision medically about when it's okay to discharge a
19 patient from involuntary commitment after the probate
20 process?
21 A Sure.
22 Q And you don't need a judge for that?
23 A No.
24 Q You don't need to go back to court for that?
25 A No.

1 Q That was not done in Ms. Argoe's case?
2 A That's correct, not that I saw.
3 MR. COLE: Object to form.
4 BY MR. DODSON:
5 Q Dr. Dodds made the decision about when to discharge
6 her, correct?
7 A Based on the records that I've seen, yes.
8 Q And at any point, Dr. Dodds could have made that
9 decision when she became involved in her care and
10 treatment, couldn't she?
11 A Sure.
12 Q And after the probate hearing, you would agree with me
13 that Dr. Mobley could have also discharged her?
14 A Had she wanted to, sure. Sure. She was still there, I
15 think, for a few days after her probate hearing.
16 Q What mental illnesses does Ms. Argoe suffer from today?
17 A I have no opinion. I don't know. Never - today's the
18 first time I've ever seen her and she's been very
19 pleasant. So, I have no opinion.
20 Q So, you've never seen her in a clinical setting?
21 A No, no.
22 Q You've never seen her in your office?
23 A No.
24 Q Never performed any psychological or psychiatric
25 testing on her?

12.5.11

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
MARTHA LEWIN ARGOE, Plaintiff, vs. THREE RIVERS BEHAVIORIAL HEALTH, LLC, PSYCHIATRIC SOLUTIONS, INC., PHYLLIS BRYANT-MOBLEY, MD, GLENN HOOKER, MD, AIKEN REGIONAL MEDICAL CENTER, AURORA PAVILION, DAVID STEINER, MD, CHERYL C. DODDS, MD, DORIS ANN BURRELL, RN, CAROLINA CARE PLAN, JAMES F. WALSH, JR., G. LEWIS ARGOE, JR. AND GEORGE L. ARGOE, III, Defendants.	)	Civil Action No. 2007-CP-32-1981 **MEMORANDUM IN OPPOSITION OF PLAINTIFF'S MOTION TO FILE SECOND AMENDED COMPLAINT**

This matter is before the Court on the motion of Plaintiff Martha Lewin Argoe to file her Second Amended Complaint to include additional causes of action to the above-referenced defendants. Psychiatric Solutions, Inc. (hereinafter "Psychiatric Solutions") to hereby opposes the motion to file Second Amended Complaint as it relates to Psychiatric Solutions, Inc.

FACTS

On June 13, 2007, the Plaintiff filed her First Amended Complaint which alleges fifteen (15) separate causes of action against the various above-referenced Defendants; of those, six (6) causes of action are alleged against Psychiatric Solutions: false imprisonment, defamation, invasion of privacy, public disclosure of private matter, intentional infliction of emotional distress and conspiracy.

On March 24, 2009, after 21 months of litigation, Psychiatric Solutions filed a Summary Judgment Motion as to all causes of action against it except conspiracy. On April 27, 2009, Judge R. Knox McMahon heard this matter. At the start of the hearing, Plaintiff dismissed her claims for public disclosure of a private matter and invasion of privacy.

By Order dated January 28, 2010 (31 months after suit was filed), Judge McMahon granted Psychiatric Solutions summary judgment with respect to all claims asserted against it (with the exception of conspiracy). (Exhibit A: Order of Lexington County Circuit Court dated January 28, 2010). On February 19, 2010, the Plaintiff filed a Notice of Appeal which sought to appeal the dismissal of the causes of action against Psychiatric Solutions for false imprisonment, defamation and intentional infliction of emotional distress. The South Carolina Supreme Court granted certiorari of the matter and heard oral arguments on April 20, 2011.

On May 31, 2011, the South Carolina Supreme Court affirmed Judge McMahon's Order granting Psychiatric Solutions summary judgment. Argoe v. Three Rivers Behavioral Center, et al, 392 S.C. 462, 710 S.E. 2d 67 (2011) (Exhibit B: Order of South Carolina Supreme Court dated May 31, 2011). Therefore, pursuant to the Argoe decision, the only remaining cause of action against Psychiatric Solutions is conspiracy.

On September 23, 2011, after the Plaintiff retained new counsel, Judge William P. Keesley issued an Order Concerning Status. (Exhibit C: Order Concerning Status dated September 23, 2011). The Order Concerning Status states that "Plaintiff's Counsel indicated that he is willing to amend the Complaint to pare down the issues and bring them up to date, in line with the appellate rulings..." See Exhibit C (emphasis added).

On October 31, 2011, Plaintiff's Counsel, Robert D. Dodson, motioned this Court to allow the Plaintiff to file a Second Amended Complaint. (Exhibit D: Plaintiff's Proposed Second

Amended Complaint). In Plaintiff's proposed Second Amended Complaint, the Plaintiff alleges for the first time a new cause of action against Psychiatric Solutions for Medical Negligence. Plaintiff's motion was filed more than four years after the initial suit and more than two and a half years after Psychiatric Solutions filed its Summary Judgment Motion.

LEGAL ARGUMENT

The Plaintiff's Motion to file a Second Amended Complaint should be denied because it would greatly prejudice Psychiatric Solutions. Rule 15(a) of the South Carolina Rules of Civil Procedure provides the following:

> A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party. A party shall plead in response to an amended pleading with the time remaining for response to the original pleading or within fifteen days after service of the amended pleading, whichever period may be the longer, unless court otherwise order

It is the responsibility of a party opposing an amendment to establish prejudice. Forrester v. Smith & Steele Builders, 295 S.C. 504, 508, 369 S.E.2d 156, 158 (Ct. App. 1988). Whether an amendment is prejudicial will often be determined by the nature of the amendment and its timing. Laber v. Harvey, 438 F.3d 404, 427 (4th Cir. 2006).

Plaintiff's proposed Second Amended Complaint seeks to add a completely new cause of action against Psychiatric Solutions for Medical Negligence. As noted above, the only causes of action which were plead in the Plaintiff's First Amended Complaint were false imprisonment, defamation, invasion of privacy, public disclosure of private matter, intentional infliction of

emotional distress and conspiracy.[1] The remaining causes of action, except conspiracy, were dismissed by way of Summary Judgment.

On appeal, the Plaintiff sought only to reverse the dismissal of the false imprisonment, defamation and intentional infliction of emotional distress. In fact, in the Plaintiff's Appellate Brief and oral argument before the South Carolina Supreme Court, she never raised any proposed new causes of action against Psychiatric Solutions. Exhibit E: Final Brief of Appellant; Argoe, 392 S.C. 462, 710 S.E. 2d 67 (2011); Exhibit F: Transcript of Oral Argument at 2, Argoe, 392 S.C. 462, 710 S.E. 2d 67 (2011).

Plaintiff does not and cannot point to any new discovery or evidence to support the current motion. Plaintiff's initial Complaint had allegations of negligence against other parties, but not Psychiatric Solutions.

If the Plaintiff is allowed to file its Second Amended Complaint, she would essentially be granted a second bite of the apple to initiate a completely new civil law suit against Psychiatric Solutions five (5) years after her case was initiated. This matter has been litigated since June 2007. Psychiatric Solutions created a litigation strategy to successfully position the case for summary judgment. That strategy did not address a cause of action which did not exist against it.

Psychiatric Solutions will be greatly prejudiced if Plaintiff is allowed to assert this new cause of action against it. The causes of action initially raised against Psychiatric Solutions in Plaintiff's First Amended Complaint are not even remotely similar to the causes action alleged in the Plaintiff's proposed Second Amended Complaint. The new cause of action does not share the same legal elements which were raised against Psychiatric Solutions in the Plaintiff's First

[1] The invasion of privacy and public disclosure of private matter causes of action were voluntarily dismissed by the Plaintiff.

Amended Complaint. Therefore, in order for Psychiatric Solutions to legitimately defend any of the proposed new causes of action, it will need to completely re-start the discovery process from the beginning. This result would effectively create an enormous financial burden on Psychiatric Solutions. Furthermore, Psychiatric Solutions would need to completely rework its strategy and even possibly retain expert(s) to evaluate and defend the new causes of action.

Therefore, Psychiatric Solutions would be extraordinarily prejudiced and would experience an immense financial burden if the Plaintiff is permitted to file her Second Amended Complaint. Additionally, Plaintiff has not shown that justice requires the proper amendments nor is the proposed amendment "in line with the appellate rulings" as they relate to Psychiatric Solutions; Plaintiff just wants to change her case against Psychiatric Solutions because she lost the first one.

CONCLUSION

The Plaintiff's Motion to file Second Amended Complaint should be denied because the Plaintiff's Second Amended Complaint would greatly great prejudice Psychiatric Solutions. For the reasons stated herein, the Plaintiff should be prohibited from filing her Second Amended Complaint.

MCANGUS GOUDELOCK & COURIE, L.L.C.

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December 5, 2011

ATTORNEYS FOR PSYCHIATRIC SOLUTIONS, INC.

Civil Action No. 07-CP-32-1981

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of December, 2011 served a copy of a Memorandum in Opposition of Plaintiff's Motion to File Second Amended Complaint by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

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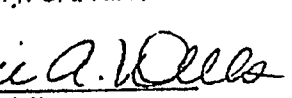


Connie A. Wells
Legal Assistant to Sterling G. Davies

COPY

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
MARTHA LEWIN ARGOE, Plaintiff, vs. THREE RIVERS BEHAVIORIAL HEALTH, LLC, PSYCHIATRIC SOLUTIONS, INC., PHYLLIS BRYANT-MOBLEY, MD, GLENN HOOKER, MD, AIKEN REGIONAL MEDICAL CENTER, AURORA PAVILION, DAVID STEINER, MD, CHERYL C. DODDS, MD, DORIS ANN BURRELL, RN, CAROLINA CARE PLAN, JAMES F. WALSH, JR., G. LEWIS ARGOE, JR. AND GEORGE L. ARGOE, III, Defendants.	)	Civil Action No. 07-CP-32-1981 **ORDER GRANTING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

FILED
2009 JAN 29 A 10 56
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

This matter came before the Court by way of a motion for summary judgment filed on behalf of the defendant, Psychiatric Solutions, Inc. ("Solutions"). Appearing at the hearing were Jan L. Warner, counsel for the Plaintiff and Trippett Boineau, III, counsel for the defendant Solutions.

PROCEDURAL HISTORY

The complaint in the above referenced action was filed in the Lexington County Court of Common Pleas on June 13, 2007. Solutions is a named defendant in the action. The plaintiff asserts the following causes of action against Solutions: 1) Intentional Infliction of Emotional Distress; 2) False Imprisonment 3) Conspiracy; 4) Defamation; 5) Invasion of Privacy; and 6) Public Disclosure of a Private Act. No other causes of action were asserted against Solutions. Solutions moved for summary judgment with respect to

EXHIBIT A

all claims except conspiracy. Solutions also moved for summary judgment based upon the fact the purchase of Three Rivers Behavioral Health, LLC ("Three Rivers") was nothing more than a stock sale and Solutions did not purchase the liabilities of Three Rivers. Also, in the alternative Solutions asserted Res Judicata as a bar to all claims asserted by the Plaintiff.

FINDINGS OF FACT

On or about June 6, 2005, an Order of Detention (see Exhibit 1 attached) was issued and executed by the Honorable Pandora Jones-Glover and filed with the Orangeburg County Probate Court. The Order required the Plaintiff to be taken into custody and examined by a licensed physician. The Plaintiff was then seen at the Orangeburg Regional Medical Center by Dr. Glenn Hooker, M.D. Dr. Hooker found the Plaintiff possessed a substantial risk of physical harm and involuntary emergency hospitalization was necessary. Dr. Hooker referred the plaintiff to Aurora Pavilion at Aiken Regional Medical Center.

The Plaintiff was later transported to Three Rivers. At that time, Phyllis Bryan Mobley, M.D. began treating the Plaintiff. Dr. Mobley, after her initial consult believed Plaintiff was suffering from bipolar disorder with manic and psychotic features. On June 13, 2005, Three Rivers filed a Notification of Emergency Admission and Appointment of Designated Examiner Form with the Probate Court. The form was filed in the Probate Court and listed Dr. Mobley and Ann Burrell, R.N. as the designated examiners.

The Honorable Marvin Lewis signed an order dated June 14, 2005 appointing Ms. Burrell and Dr. Mobley to examine the Plaintiff. A hearing was held in front of Judge Lawson on June 21, 2005. At that time, the appointed examiners presented their reports

regarding the mental condition of the Plaintiff. On June 21, 2005, after a full hearing on the issues, the Darlington County Probate Court found Mrs. Argoe to be a danger to herself and others and ordered the Plaintiff to continue undergoing treatment at Three Rivers for a period of twelve (12) months. On July 8, 2005, the Orangeburg County Probate Court entered an order appointing Dr. Dodds as the physician/examiner of the Plaintiff. Ms. Dodds submitted her report to the Court and stated she could not determine if the Plaintiff's condition was permanent or temporary. The Plaintiff was released from Three Rivers due to Ms. Dodd's finding.

Mrs. Argoe was discharged to live with her son after she received treatment at Three Rivers and consented to voluntarily taking her mediation. Mrs. Argoe's discharge diagnosis was bipolar disease and manic with psychosis.

The initial Order issued by Judge Jones-Glover, which was relied upon by the treating and examining physicians in their care and examination of the Plaintiff, was independently reviewed by Judge Tiffany Provence, in a related proceeding to which the Plaintiff was a party. The Plaintiff in that matter attempted to have the initial commitment order vacated. Judge Provence found the initial commitment was in compliance with South Carolina Probate Code Section 44-17-410, 420, 430 and 570. The Order issued by Judge Provence states, "The Court's review found that proper procedure was followed through each step of the involuntary commitment and that no grounds exist to challenge the previous Order of the Orangeburg County Probate Court with regards to that commitment." The Plaintiff did not appeal the Order issued by Judge Provence.

STANDARD OF REVIEW

Summary judgment is appropriate only if there is no genuine issue of material fact

and the moving party is entitled to judgment as a matter of law. Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994). In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Id.* If triable issues exist, those issues must go to the jury. Young v. S.C. Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Hall v. Felder, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002). Summary judgment is a drastic remedy that should be cautiously invoked to ensure a litigant will not be improperly deprived of trial on disputed factual issues. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

STOCK SALE

Solutions claims that it did not purchase the liabilities of Three Rivers and thus is not responsible for any damages associated with this lawsuit. Solutions relies on the Stock Sale Agreement as evidence. Section 9.12 of the Stock Sale agreement states that Solutions is not purchasing any of the liabilities of Three Rivers. However, at this time it is unclear as to the total nature of the transaction between Three Rivers and Solutions.

While there is not S.C. case law directly on point, other states have held that the purchase of stock may include the purchase of liabilities. Simmons v. Mark Lift

Industries, Inc. 366 S.C. 308, 622 S.E.2d 213 (2005). In this case, there appears to be a genuine issue of fact as to whether or not the purchase of the stock included the liabilities. As such, Solutions motion for summary judgment with regards to the Stock Sale is DENIED.

RES JUDICATA

Solutions argues it is entitled to summary judgment based upon the theory of Res Judicata. Res Judicata bars the litigation of an issue which has previously been disposed of by the Courts. A final judgment in a prior action binds the parties in a second action based upon the same claims and issues that might have been litigated in the first action. Hilton Head Ctr. Of South Carolina Inc. v. Public Serv. Comm'n. 294, S.C. 9, 362 S.E.2d 176 (1987); Beall v. Doe, 281 S.C. 369, 315 S.E.2d 186 (Ct. App. 1984).

At the hearing, Plaintiff presented evidence in the form of an Order of Judge Goodstein regarding her review of the Order executed by Judge Provence. It appears the Order issued by Judge Provence is being reviewed by Judge Goodstein and thus such Order is not final. As such, Res Judicata cannot apply at this time. Solutions motion for summary judgment based upon the theory of Res Judicata is DENIED.

FALSE IMPRISONMENT

Solutions moved for summary judgment with regards to the false imprisonment claim asserted by the Plaintiff. Solutions is entitled to summary judgment on Plaintiff's false imprisonment claim because the conduct of the Defendant, with respect to the Plaintiff, was lawful. South Carolina Courts define false imprisonment as the "deprivation of one's liberty without lawful justification." Jones by Robinson v. Winn Dixie Greenville, Inc. 318 S.C. 171, 456 S.E.2d 429 (1995). To prove a claim for false

imprisonment, the evidence must demonstrate:

1) that the defendant restrained the plaintiff;

2) the restraint was intentional; and

3) the restraint was unlawful

Id. At 175, 432. In order to prove a claim for false imprisonment, the restraint must be unlawful. In this case the restraint was based upon the execution of an involuntary commitment order by a Probate Judge. South Carolina does not recognize a claim for false imprisonment when one is restrained pursuant to an involuntary commitment order.

In Manley v. Manley, 291 S.C. 325 S.E.2d 312 (Ct. App. 1987), a plaintiff instituted an action against her adult children, her former husband and a psychiatrist for false imprisonment, outrage and defamation after she was involuntarily committed to a state psychiatric facility. The trial court granted the defendants motion for summary judgment. In that case the court found "where one is arrested by lawful authority, an action for false imprisonment cannot be maintained." Id at 330. (citing Bushardt v. United Investment Co., 121 S.C. 324, 113 S.E. 637 (1922).

In the case at hand, the Plaintiff was taken into custody pursuant to a lawful order of the Court. As such, the detention of the Plaintiff was lawful and no action for false imprisonment may be maintained against Solutions as they relied on the original order of involuntary commitment in holding the Plaintiff at its facility. Solutions motion for summary judgment with respect to the plaintiff's false imprisonment claim is GRANTED.

DEFAMATION

Solutions moved for summary judgment with regards to the plaintiff's claim for

Pl. # 6

defamation. In order to prevail on her claim for defamation, the Plaintiff must prove the following:

1) a false and defamatory statement concerning another;

2) an unprivileged publication to a third party;

3) fault on the part of the publisher; and

4) either actionability of the statement irrespective of special harm in the existence of special harm caused by the publication. Holtzscheiter v. Thomon Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998) (Toal, J., concurring in resulting separate opinion).

The defamatory statement must be false and truth is an absolute defense. Id.

The treatment provided by Three Rivers was confined to that ordered by the Court. The treatment provided by Three Rivers was not disclosed to any party other than as was ordered. Further, any reports issued by Three Rivers were qualifiedly privileged pursuant to Manley v. Manley and cannot be defamatory. In order to assert a conditional privilege, one must show "...good faith, an interest to be upheld, a statement limited in scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits." Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987).

Additionally S.C. Code Ann. Section 44-22-90(2) & 100(2) provide exceptions that allow the disclosure of privileged psychiatric information in involuntary commitment proceedings, when a patient is diagnosed by a qualified professional as in need of

commitment to a mental health facility for care of the patient's mental illness; and where a court directs that disclosure is necessary for the conduct of proceedings before it and that failure to make a disclosure is contrary to the public interest. Solutions motion for summary judgment with respect to the plaintiff's claim for defamation is GRANTED.

INVASION OF PRIVACY/PUBLIC DISCLOSURE OF A PRIVATE ACT

Solutions moved for summary judgment with respect to the plaintiff's claims for public disclosure of a private act and invasion of privacy. Prior to the hearing the Plaintiff agreed to the dismissal of these claims. As such, no argument was heard with regards to the above mentioned claims and they are DISMISSED.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Solutions moved for summary judgment with regards to the plaintiff's claim for intentional infliction of emotional distress. In order to prevail in her claim for intentional infliction of emotional distress, the Plaintiff must establish:

1) "the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from its conduct;
2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;
3) the actions of the defendant caused the Plaintiff emotional distress; and
4) the emotional distress suffered by the Plaintiff was severe so that no reasonable person could be expected to endure it." Holtzscheiter v. Thomson Newspapers, Inc. 306 S.C. 297, 411 S.E.2d 664 (1991).

#8

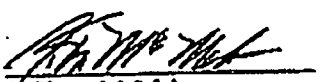
Three Rivers did not participate in the actions leading to the initial commitment order. Furthermore, in their treatment of Plaintiff, Three Rivers at all time acted in a reasonable manner. As such, the actions of Three Rivers and/or Psychiatric Solutions cannot reasonably be regarded as so extreme and outrageous as to allow the Plaintiff to recover under this theory. Further, pursuant to the involuntary commitment order, Three Rivers and/or Psychiatric Solutions is entitled to quasi-immunity as a court appointed physician treated the Plaintiff at its facility. Solutions motion for summary judgment with regards to the claim for intentional infliction of emotional distress is GRANTED.

CONCLUSION

Based upon the foregoing, the defendant's motion for summary judgment is GRANTED with respect to the plaintiff's claims for false imprisonment, outrage/intentional infliction of emotional distress and defamation. Prior to the hearing, plaintiff agreed to dismiss its causes of action for public disclosure of a private fact and invasion of privacy and those claims are dismissed.

IT IS ORDERED THAT summary judgment is granted as to plaintiff's claims for false imprisonment, defamation and outrage/intentional infliction of emotional distress and plaintiff's claims for public disclosure of a private fact and invasion of privacy are dismissed.

IT IS SO ORDERED.



R. Knox McMahon
Presiding Judge

Lexington, South Carolina
January 28th, 2010

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Martha Lewin Argoe, Appellant,

v.

Three Rivers Behavioral Health, L.L.C., Psychiatric Solutions, Inc., Phyllis Bryant-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center, Aurora Pavilion, David Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN, Carolina Care Plan, James F. Walsh, Jr., G. Lewis Argoe, Jr. and George L. Argoe, III, Defendants,

Of whom Psychiatric Solutions, Inc. is the Respondent.

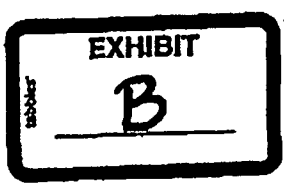
Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Opinion No. 26978
Heard April 20, 2011 – Filed May 31, 2011

AFFIRMED

Charles M. Black, Jr., Mitchell C. Payne, of Warner, Payne & Black, of Columbia, for Appellant.

Weston Adams, III, Trippett Boineau, III, and Helen F. Hiser, of McAngus Goudelock & Courie, of Columbia, for Respondent.



JUSTICE BEATTY: This case arises out of the involuntary commitment of Martha Lewin Argoe (Appellant) to Three Rivers Behavioral Health, L.L.C., a psychiatric, inpatient facility that was subsequently purchased by Psychiatric Solutions, Inc.[1] (Respondent). Appellant appeals the circuit court's order granting summary judgment in favor of Respondent as to her causes of action for false imprisonment, defamation, and intentional infliction of emotional distress. We affirm.

I. Factual/Procedural History

Pursuant to section 44-17-410 of the South Carolina Code,[2] Appellant's husband (Husband) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005.

On June 6, 2005, Probate Court Judge Pandora L. Jones-Glover issued an Order of Detention that referenced section 44-17-430[3] of the South Carolina Code and provided that an "officer of the peace take the person [Appellant] alleged to be mentally ill into custody for a period of [time] not to exceed twenty-four (24) hours, during which detention said person shall be examined by a licensed physician."

On June 7, 2005, deputies with the Orangeburg County Sheriff's Department transported Appellant to the emergency room of The Regional Medical Center of Orangeburg (TRMC). At 3:35 p.m., Appellant was given a physical and mental evaluation. Appellant was discharged at 5:13 p.m. with a diagnosis of "Altered Mental Status" and instructions for her to return the following day for further evaluation. Subsequently, Appellant was driven home by law enforcement.

On June 8, 2005 at 3:00 p.m., Dr. Glenn Hooker, who evaluated Appellant at the Orangeburg Area Mental Health Center, completed Part II of the Certificate of Licensed Physician Examination for Emergency Admission pursuant to section 44-17-410(2) of the South Carolina Code. In this document, Dr. Hooker certified that inpatient psychiatric hospitalization was medically necessary for Appellant and identified Aurora Pavilion Behavioral Health Services (Aurora), a division of the Aiken Regional Medical Center, as the facility that would accept Appellant for further treatment. Appellant's medical records verify that she was involuntarily admitted to that facility on June 8, 2005 at 5:45 p.m. An attending physician at Aurora completed the requisite Physician Certification form stating that he certified that "the inpatient psychiatric hospital admission was medically necessary for psychiatric treatment, which could reasonably be expected to improve the patient's condition."

On June 9, 2005, due to health insurance constraints, Appellant was transferred and admitted to Three Rivers Behavioral Health, L.L.C. (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[4] 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.[5]

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.[6]

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 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."

On June 13, 2007, Appellant filed suit against Husband and her son as well as the hospitals, physicians, and nurses involved in the involuntary commitment proceedings. Appellant asserted causes of action against Respondent for intentional infliction of emotional distress, false imprisonment, conspiracy, defamation, invasion of privacy, and public disclosure of a private fact.

Respondent filed a motion for summary judgment as to all causes of action with the exception of conspiracy. In support of its motion, Respondent initially claimed that it was not a proper party to the lawsuit as the December 2006 Purchase Agreement required Three Rivers to indemnify Respondent and hold harmless from any and all liabilities occurring before January 1, 2007. Additionally, Respondent claimed that the doctrine of *res judicata* precluded Appellant from challenging the validity of the June 6, 2005 commitment order as Appellant failed to appeal this order. Accordingly, Respondent asserted it was justified in relying on the probate court order.

As to Appellant's specific causes of action, Respondent asserted that it was entitled to summary judgment with respect to false imprisonment and intentional infliction of emotional distress because the actions of Three Rivers were based upon the execution of a valid involuntary commitment order of the probate court. In terms of Appellant's claims of defamation and invasion of privacy/public disclosure of a private fact, Respondent contended that any disclosure of Appellant's psychiatric information was authorized and done in accordance with the judicially-mandated involuntary commitment order and proceedings.

Following a hearing, Circuit Court Judge R. Knox McMahon granted summary judgment to Respondent as to Appellant's claims for false imprisonment, intentional infliction of emotional distress, and defamation.[7]

Appellant appealed Judge McMahon's order to the Court of Appeals. This Court certified this appeal pursuant to Rule 204(b), SCACR.

II. Discussion

A.

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming, 350 S.C. at 493-94, 567 S.E.2d at 860.

B.

All of Appellant's arguments emanate from the following two theories: (1) the Order of Continued Hospitalization (June 13, 1005) and the Order for Continued Treatment (June 21, 2005) were invalid as they were based on the void initial Order of Detention (June 6, 2005); and (2) there was no factual basis to substantiate the findings underlying the Order for Continued Treatment (June 21, 2005). Without a "lawful" probate court order, Appellant claims Respondent was not justified in detaining her, no privilege attached to Respondent's communications about Appellant, and it was not reasonable for Respondent to detain her.

As will be discussed, we find that Appellant is procedurally barred from challenging the validity of the underlying orders. Based on the valid orders, we conclude that the circuit court judge correctly granted summary judgment in favor of Respondent.

C.

We find Appellant's challenge to the validity of the underlying commitment orders was not only untimely but also barred by the doctrine of *res judicata*.

On March 25, 2008, Appellant filed a Petition to Vacate Commitment Proceedings. In this Petition, Appellant contended the June 6, 2005 Order of Detention was rendered "invalid" after she was discharged on June 7, 2005 from TRMC of Orangeburg. Because the parties could not "re-use" the June 6, 2005 Order of Detention to transport her to Aurora on June 8, 2005, Appellant asserted that the probate court lacked jurisdiction over her and the subject matter of the proceedings.

By order dated August 25, 2008, Probate Court Judge Tiffany Provence denied Appellant's Petition. Judge Provence rejected Appellant's contention that the parties "re-used" the June 6, 2005 Order of Detention. Instead, she found that Dr. Hooker's Certificate of Licensed Physician Examination for Emergency Admission "trigger[ed] S.C. Code Ann. § 44-17-440, which grants state or local law enforcement three days from the date of said certification to transport the person to the hospital designated by the certificate."

Referencing the applicable code provisions, Judge Provence found that "no procedural error existed under the S.C. Probate Code."

Appellant appealed Judge Provence's order to the circuit court. By order dated August 18, 2009, Judge Diane S. Goodstein affirmed Judge Provence's order in its entirety.

As outlined above, Appellant's challenge to the commitment proceedings was clearly beyond the statutorily-mandated, fifteen-day time period. See S.C. Code Ann. § 44-17-620 (2002) ("The petitioner or the person shall have the right to appeal from any order of the probate court issued pursuant to Section 44-17-580 to the court of common pleas of the county where the probate court is situated. The notice of intention to appeal together with the grounds for the appeal shall be filed in the probate court and the court of common pleas within fifteen days of the date of the order issued pursuant to Section 44-17-580."); Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994) (holding that fifteen-day limit provided under section 44-17-620 sets forth the procedure to appeal any order of involuntary commitment from the probate court). Accordingly, we find Appellant was precluded from collaterally attacking the underlying commitment orders. See In re Webber, 689 S.E.2d 468 (N.C. Ct. App. 2009) (recognizing that failure to timely appeal involuntary civil commitment order precluded collateral attack on alleged erroneous underlying order), cert. denied, 699 S.E.2d 925 (N.C. 2010).

Furthermore, there is no evidence that Appellant appealed Judge Goodstein's order. Because Judge Goodstein's order constitutes a final adjudication regarding the validity of the commitment proceedings, the doctrine of *res judicata* precludes Appellant from asserting any challenge to the commitment orders.[8] See Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992) (recognizing that in order to bar subsequent lawsuit based on *res judicata*, the following elements must be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit).[9]

Additionally, we disagree with Appellant's assertion that her involuntary commitment was without a factual basis. In support of this assertion Appellant directs this Court's attention to numerous documents, including Dr. Leonhardt's consulting opinion dated June 14, 2005, which was requested by Dr. Bryant-Mobley and reviewed by Dr. Dodds. It was indicated in the opinion that Appellant's condition was the result of "marital conflict" as she was an "alleged victim of abuse."

Initially, we would note that Judge Lawson presumably took into consideration Dr. Leonhardt's opinion as the court-appointed examiners presented their findings to Judge Lawson during the June 21, 2005 hearing. Furthermore, the remaining documents offered by Appellant are depositions and affidavits that post-date the involuntary commitment proceedings. These after-the-fact documents cannot operate to retroactively invalidate the commitment orders that were procedurally proper and factually substantiated by court-appointed medical personnel. To find otherwise, we would undermine the probate court's authority in involuntary commitment proceedings.

D.

Having found that the underlying commitment orders were valid, the question becomes whether Judge McMahon correctly granted summary judgment in favor of Respondent as

to Appellant's claims of false imprisonment, defamation, and intentional infliction of emotional distress.

1. False Imprisonment

In granting summary judgment to Respondent, Judge McMahon found that Appellant's claim of false imprisonment could not be maintained because Respondent took Appellant into custody and detained her pursuant to a lawful order of the probate court.

"False imprisonment is the deprivation of one's liberty without justification." Jones by Robinson v. Winn Dixie Greenville, Inc., 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995). "In order to recover under a theory of false imprisonment, the complainant must establish (1) the defendant restrained him; (2) the restraint was intentional; and (3) the restraint was unlawful." Id.

"If a hospital fails to follow the statutory requirements for the commitment of a person to a hospital or mental facility, it may be liable for false imprisonment." 18 S.C. Jur. Hospitals § 21 (2011). "If these statutory guidelines are not followed, the hospital may face liability for false imprisonment because any detainment would be unlawful." Id.

As previously discussed, Appellant was lawfully taken into custody and detained pursuant to valid probate court orders. It is generally accepted that:

> A person confined pursuant to an authorized mental health commitment proceeding or process may not recover damages in a false imprisonment action. In accordance with the general rule dealing with confinement under process, even where the order of commitment is erroneously made, but is valid on its face and issued by a court of competent jurisdiction, the detention is not false imprisonment.
>
> State hospital officials have no duty to examine the form of the report of the examining psychiatrists upon which an order of commitment was based, nor is there any duty to examine or investigate a commitment order valid on its face, unless there is knowledge that there was, in fact, no basis for implementing the order.

32 Am. Jur. 2d False Imprisonment § 33 (2007).

Accordingly, Appellant cannot maintain a claim of false imprisonment against Respondent. See Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987) (concluding involuntary commitment of mother, who claimed she was not mentally ill, was pursuant to a lawful order of the probate judge and, thus, was not a basis for recovery on a claim of false imprisonment against former husband, two adult children, and psychiatrist).

2. Defamation

In granting summary judgment to Respondent, Judge McMahon found the treatment provided by Three Rivers: (1) was confined to that ordered by the probate court; (2) was not disclosed to any party other than was ordered; and (3) any reports issued by Three Rivers were qualifiedly privileged and, thus, could not be defamatory. Additionally, Judge

McMahon found that statutory exceptions allowed the disclosure of privileged psychiatric information in involuntary commitment proceedings.

"The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff." Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 464, 629 S.E.2d 653, 664 (2006) (citing Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998)).

"In order to prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Id. "The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." Fleming, 350 S.C. at 494, 567 S.E.2d at 860.

We find that summary judgment was properly granted to Respondent as any communications issued by Three Rivers' employees were qualifiedly privileged as they were done in effectuating the lawful orders of the probate court. See Manley, 291 S.C. at 330-32, 353 S.E.2d at 315 (concluding mother, who was involuntarily committed, could not maintain action for defamation against former husband, two adult children, and psychiatrist where assertions made in connection with the involuntary commitment were qualifiedly privileged as they did not exceed their proper scope).

Furthermore, sections 44-22-90 and 44-22-100 of the South Carolina Code authorized Three Rivers' employees to disclose Appellant's mental health records within the confines of the involuntary commitment proceedings. See S.C. Code Ann. § 44-22-90(A)(2), (4) (2002) (providing exceptions to the disclosure of privileged mental health records, including in involuntary commitment proceedings and information related through the course of a court-ordered psychiatric examination); Id. § 44-22-100(A)(2), (4), (5) (permitting disclosure of confidential mental health records where disclosure is necessary: for the conduct of proceedings before a court and that failure to make the disclosure is contrary to the public interest; to cooperate with law enforcement, health, welfare, and other agencies or to further the welfare of a patient; and to carry out the statutory provisions for involuntary commitment proceedings).

3. Intentional Infliction of Emotional Distress

In granting summary judgment in favor of Respondent, Judge McMahon found that the actions of Three Rivers could not be regarded as so extreme and outrageous to allow Appellant to recover for intentional infliction of emotional distress because Three Rivers did not participate in procuring the initial commitment order and the treatment of Appellant was conducted in a reasonable manner. Additionally, Judge McMahon held that Three Rivers was entitled to quasi-judicial immunity as it was treating Appellant pursuant to the involuntary commitment order.

In order to recover for intentional infliction of emotional distress, a plaintiff must establish the following:

(1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;

(2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"

(3) the actions of the defendant caused plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

We hold that Appellant could not, as a matter of law, maintain a claim for intentional infliction of emotional distress against Respondent as Respondent's conduct towards Appellant was reasonable and in accordance with the valid probate court orders. See Manley, 291 S.C. at 329-30, 353 S.E.2d at 314 (concluding mother, who was involuntarily committed to psychiatric facility, could not maintain cause of action for intentional infliction of emotional distress against former husband, two adult children, and psychiatrist, where defendants "acted in good faith and in a reasonable manner" regarding the involuntary commitment proceedings).

III. Conclusion

Because Appellant failed to timely and properly challenge the probate court's orders, they are presumed valid. Based on these valid orders, we find that Respondent's conduct toward Appellant was lawful, justified, and reasonable. Thus, Appellant cannot maintain causes of action for false imprisonment, defamation, or intentional infliction of emotional distress against Respondent. Accordingly, we affirm the decision of the circuit court granting summary judgment in favor of Respondent.

AFFIRMED.

TOAL, C.J., PLEICONES, KITTREDGE and HEARN, JJ., concur.

[1] On December 15, 2006, Respondent's wholly-owned subsidiary, Premier Behavioral Solutions, Inc., entered into a stock sale purchase of Three Rivers Healthcare Group, L.L.C., Three Rivers SPE Holding, L.L.C., and Three Rivers SPE Manager, Inc., L.L.C.

[2] S.C. Code Ann. § 44-17-410 (2002 & Supp. 2010).

[3] S.C. Code Ann. § 44-17-430 (Supp. 2010).

[4] Prior to this decision, a change of venue was made from Orangeburg County to Darlington County.

[5] S.C. Code Ann. § 44-17-550 (2002).

[6] S.C. Code Ann. § 44-17-580 (Supp. 2010).

[7] Prior to the summary judgment hearing, Appellant agreed to dismiss her causes of action for public disclosure of a private fact and invasion of privacy. Judge McMahon also denied summary judgment as to Respondent's claim that it was not a proper party and its reliance on the doctrine of *res judicata*.

[8] Given the procedural history, Appellant's counsel conceded the validity of the initial commitment orders at oral argument before this Court.

[9] In an attempt to circumvent these procedural bars, Appellant claims the alleged procedural errors divested the probate court of subject matter jurisdiction. We find this claim to be meritless as any alleged procedural error would not affect the subject matter jurisdiction of the probate court as all of the proceedings involved involuntary commitment issues for which the probate court is statutorily authorized to adjudicate. See S.C. Code Ann. § 62-1-302(a)(6) (2009) ("To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to the involuntary commitment of persons suffering from mental illness . . . ."); Boan v. Jacobs, 296 S.C. 419, 421, 373 S.E.2d 697, 698 (Ct. App. 1988) ("The concept of jurisdiction refers to the authority of a court over a particular person (personal jurisdiction) or the authority of a court to entertain a particular action (subject matter jurisdiction), but the concept does not refer to the validity of the claim on which an action against a person is based.").

ORIGINAL
FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
Martha Lewin Argoe,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	ORDER CONCERNING STATUS
	)	
Three Rivers Behavioral Health, LLC, et al.,	)	Case Number 2007-CP-32-01981
	)	
Defendants.	)	

2011 SEP 26 P 3:46

SETH A. CARRIGE
CLERK OF COURT
LEXINGTON SC

LMC

SCANNED

At a status conference held today, the attorneys reported on the status of the case and the following directives were given by the court:

1) The attorney for the plaintiff is now Robert Dodson, Esquire.

2) The case has involved appeals, consolidation with other cases, and settlements which make it difficult for the court to assess its current posture.

3) Plaintiff's counsel indicated that he is willing to amend the Complaint to pare down the issues and bring them up to date, in line with the appellate rulings and the settlements. He is given 30 days to prepare a proposed Amended Complaint, which he is to circulate to all opposing counsel. If there is no objection, the Amended Complaint will be filed, Amended Answers and responsive pleadings filed, and the case will proceed. If there is an objection, the plaintiff will file a motion to amend the Complaint and a hearing will be scheduled on it.

4) The undersigned judge has a conflict of interest if Michael Pauley, Esquire is involved in this case because Mr. Pauley has been retained by the Insurance

EXHIBIT
C

Reserve Fund to represent the undersigned judge in a lawsuit. The attorneys on the conference call expressed that Mr. Pauley represented the Probate Judge who signed the order of concerning the plaintiff, and the attorneys stated that they did not believe that he is involved in the case now. Plaintiff's counsel will check to make sure about whether Mr. Pauley is involved in the case or any related case that may be pending, and he is to notify the court.

5) This case will require a date certain, but it is too early to schedule at this point. The parties are to attempt to circulate a consent scheduling order once the pleadings are closed. Another status conference will be scheduled in 2012, if not before.

AND IT IS SO ORDERED.

#2

September 23, 2011

William P. Keesley
Chief Judge for Administrative Purposes

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP3201981

Martha Lewin Argoe *vs.* Three Rivers Behavioral Center

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Court Reporter:

_____

PRESIDING JUDGE -

This judgment was entered on the n/a, and a copy mailed first class this 30th day of September, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Robert D. Dodson
Law Offices of Robert Dodson, PA
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CPFORM4M

Noah M Hicks II
P O Box 7996 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/lc

SCRCP APP-24/FORM 4

Beth A. Carrigg - Clerk of Court

CPFORM4M

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT

Martha Lewin Argoe, *Plaintiff,* vs. Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Glenn Hooker, MD, Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan, *Defendants.*	)	Civil Action No.: 2007-CP-32-1981 **SECOND AMENDED COMPLAINT** **(Jury Trial Demanded)**

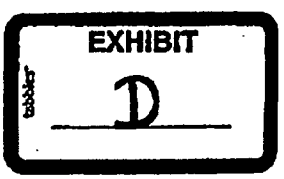
Plaintiff, by and through undersigned counsel, would show unto the Court as follows:

NATURE OF CASE

1. This is a medical negligence case arising from a forced inpatient psychiatric evaluation which began on or about June 7, 2005. In addition, Plaintiff has asserted causes of action for assault and battery related to psychiatric medications she was forced to take but which were not medically necessary or medically warranted. In addition, Plaintiff has asserted causes of action against Carolina Care Plan because of that party's role in the Plaintiff's forced inpatient hospitalization.

PARTIES/JURISDICTION & VENUE

2. Upon information and belief, Defendant, Three Rivers Behavioral Health, LLC (hereinafter "Three Rivers") is a psychiatric inpatient facility located in Lexington County, South Carolina.



3. Upon information and belief, Three Rivers is now owned by Defendant, Psychiatric Solutions, Inc.

4. Upon information and belief, Psychiatric Solutions, Inc., is a corporation organized and existing under the laws of the state of South Carolina.

5. Upon information and belief, Defendant, Phyllis Bryan-Mobley, MD, is a resident of the state of South Carolina.

6. Upon information and belief, Defendant, Glenn Hooker, MD, is a resident of the state of South Carolina.

7. Upon information and belief, Defendant, Aiken Regional Medical Center-Aurora Pavilion (hereinafter "Aurora Pavilion"), is a corporation organized and existing under the laws of the state of South Carolina.

8. Upon information and belief, Defendant, David A. Steiner, MD, is a resident of the state of South Carolina.

9. Upon information and belief, Defendant, Cheryl C. Dodds, MD, is a resident of the state of South Carolina.

10. Upon information and belief, Defendant, Doris Ann Burrell, is a resident of the state of South Carolina.

11. Upon information and belief, Defendant, Carolina Care Plan, is a corporation organized and existing under the laws of a state other than South Carolina but which is authorized to do business and in fact does business within the state of South Carolina.

12. The majority of acts which give rise to this Complaint took place in Lexington County, South Carolina.

13. Upon information and belief, this Court has jurisdiction over the parties and subject matter and venue is properly asserted in Lexington County, South Carolina.

FACTUAL ALLEGATIONS

14. On or about June 6, 2005, Plaintiff's former husband (and her husband at the time) filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court.

15. At that time; Plaintiff was not a danger to herself or other people.

16. Plaintiff's former husband filed the Application as part of a plan and scheme to have the Plaintiff committed to an inpatient psychiatric facility so that he would eventually be able to have access to her money, bank accounts and other material assets and could convert those things for his own use and benefit.

17. In the Application for Involuntary Emergency Hospitalization, Plaintiff's former husband made a number of material misrepresentations related to the Plaintiff's condition and behavior.

18. Based upon the material misrepresentations in the Application for Involuntary Emergency Hospitalization, the Probate Court issued an Order of Detention pursuant to SC Code Ann. § 44-17-40.

19. In relevant part, the Probate Court's order provided that:

> *"an officer of the peace take the person alleged to be mentally ill into custody for a period not to exceed 24 hours, during which detention, said person shall be examined by a licensed physician."*

20. On or about June 7, 2005, the Orangeburg County Sheriff's Department detained the Plaintiff pursuant to the Probate Court's Order and committed her to the care and custody at the Regional Medical Center of Orangeburg.

21. Pursuant to the Probate Court's Order, Plaintiff was evaluated by Defendant, Glenn Hooker, MD.

22. While Defendant Hooker saw the Plaintiff, he never performed an adequate psychiatric evaluation to determine if the Plaintiff should be involuntarily committed because she was a danger to herself or others.

23. Instead, Defendant Hooker referred the Plaintiff for a CT scan to the brain, which was negative.

24. Had Defendant Hooker performed an adequate and medically competent evaluation, he would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

25. Thereafter, that same day, Plaintiff was released from the Orangeburg Regional Medical Center and allowed to return home.

26. The following day, June 8, 2005, Defendant Hooker completed the necessary paperwork to have the Plaintiff involuntarily committed for inpatient psychiatric hospitalization and treatment, even though he had never performed an adequate or medically competent evaluation of the Plaintiff as was required by the Probate Court's Order and was dictated by the standard of care for psychiatrists.

27. That same day, June 8, 2005, Sheriff's deputies took the Plaintiff into custody and transported her to Defendant, Aurora Pavilion.

28. Upon admission at Aurora Pavilion, Plaintiff was initially seen and evaluated by Defendant, David A. Steiner, MD.

29. Defendant Steiner did not perform an adequate or competent assessment of the Plaintiff and had Defendant Steiner performed an adequate and competent examination, he would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

30. Because of Hooker and Steiner's inadequate, incomplete and incompetent evaluations of the Plaintiff, the Plaintiff was subjected to involuntary inpatient psychiatric hospitalization at Aurora that was not medically necessary or medically warranted.

31. As part of this involuntary inpatient psychiatric hospitalization, Plaintiff was given a full body search and strip search which was humiliating to her and would have been humiliating to any reasonable person under like or similar circumstances.

32. Around this same time, June 8, 2005, Defendant, Carolina Care Plan, assigned a medical manager and other medical professionals to Plaintiff's case because her medical bills during the involuntary commitment were being paid by Carolina Care Plan.

33. At that time, it was determined that she did not have benefits to stay at Aurora Pavilion and therefore plans were made to transfer her to another psychiatric facility for involuntary inpatient treatment.

34. The following day, June 9, 2005, Plaintiff was transferred and admitted to Defendant, Three Rivers.

35. At that time, she was seen and evaluated by Phyllis Bryan-Mobley, MD but Defendant Bryan-Mobley did an incomplete and incompetent evaluation of the Plaintiff and based upon Bryan-Mobley's incomplete and incompetent evaluation of the Plaintiff, the

Plaintiff remained involuntarily committed, despite the fact that she was not a danger to herself or other people.

36. Had Defendant Bryan-Mobley performed an adequate and medically competent evaluation, she would have determined that the Plaintiff was not a danger to herself or others and was not in need of involuntary inpatient psychiatric hospitalization.

37. On or about June 10, 2005, Defendant Bryan-Mobley and Defendant Doris Ann Burrell were appointed by the Probate Court as examiners for the Plaintiff to determine if she was a danger to herself or others.

38. On or about June 21, 2005, the Probate Court conducted a hearing to determine whether the Plaintiff should continue to be involuntarily committed.

39. At the time of this hearing, and prior to the hearing, Defendants Bryan-Mobley and Burrell had never conducted adequate, complete or competent examinations of the Plaintiff to determine whether she was truly a danger to herself or other people.

40. Based upon their incomplete and incompetent examinations, which were grossly outside the standard of care for reasonable psychiatrists, psychiatric nurses, and other psychiatric professionals, these individuals indicated the Plaintiff was a danger to herself and was a danger to other people, even though they had not performed reasonable, complete, adequate and competent evaluations in order to allow them to make this determination.

41. Had these Defendants conducted proper, complete and competent examinations of Plaintiff, they would have easily determined the Plaintiff was not a danger to herself or other people and should not be subjected to involuntary commitment.

42. In fact, and by way of example only, during her involuntary commitment, the Plaintiff was given a personal assessment inventory by Leslie C. Morey, Ph.D. Dr. Morey

concluded that the Plaintiff was entirely within normal limits and there was no indication of significant psycho-pathology.

43. Nonetheless, Bryan-Mobley and Burrell simply ignored and disregarded such testing as well as a host of other evidence and instead based their diagnoses, in whole or in part, upon what was being told to them by the Plaintiff's now ex-husband and son who had ulterior motives for financial gain in keeping the Plaintiff involuntarily committed.

44. Because of the incomplete and incompetent examinations of the Plaintiff by the physicians described above and based upon the incomplete and incompetent reports these physicians produced without adequately and completely examining the Plaintiff, the Probate Court issued an order for continued hospitalization and involuntary commitment of the Plaintiff, even though reasonably prudent and reasonably diligent psychiatrists, psychiatric nurses and other psychiatric professionals would have easily determined that the Plaintiff was not a danger to herself or other people and was therefore not in need of inpatient psychiatric hospitalization.

45. Moreover, Defendants Bryan-Mobley and Burrell failed to undertake reasonable and necessary steps to verify the accuracy (or in this case, the inaccuracy) of the information being conveyed to them by Plaintiff's now ex-husband and her son.

46. Had these Defendants undertaken such reasonable and necessary steps they would have discovered that the information being conveyed to them by the Plaintiff's now ex-husband and her son was false, misleading and that the Plaintiff was neither a danger to herself or to others.

47. Thereafter and as a direct and proximate result of the inadequate, incomplete, and incompetent examination of Bryan-Mobley and Burrell the Probate Court issued an order for the mandatory and involuntary hospitalization of the Plaintiff.

48. On or about June 27, 2005, Defendant, Cheryl C. Dodds saw and evaluated the Plaintiff.

49. At that time, Defendant Dodds noted that the Plaintiff was not suicidal or homicidal, i.e., she did not pose a danger to herself or others but nonetheless, Dodds and the other Defendants named herein continued with a course of treatment which included involuntarily hospitalization and the use of mind-altering medications, neither of which were medically necessary or warranted and thus were outside the standard of care.

50. On or about June 28, 2005 the Plaintiff's medical benefits were exhausted through Carolina Care Plan.

51. Nonetheless, Carolina Care Plan continued to pay for her inpatient involuntary commitment even though it knew or reasonably should have known that such commitment was not medically necessary or medically warranted based on the incomplete and incompetent evaluations of the above named physicians and health care providers.

52. Moreover, and upon information and belief, Defendant Carolina Care Plan had professional nurses and doctors reviewing Plaintiff's medical records and any reasonable review of these medical records would have revealed and should have revealed to CCP that the Plaintiff's involuntary commitment was not medically justified, medically warranted or medically necessary.

53. However because CCP failed to adequately review the incomplete and incompetent evaluations of the above described physicians, it continued to pay for benefits thereby allowing Plaintiff's involuntary commitment to continue.

54. Upon information and belief, had CCP stopped paying for benefits because the benefits were not medically necessary or medically warranted, the above described physicians would have lost any monetary incentive that they had to continue to detain the Plaintiff and treat the Plaintiff for conditions for which no treatment was necessary because the conditions simply did not exist.

55. Over the course of the next three (3) weeks, the Plaintiff continued to remain involuntarily committed against her will.

56. During the majority of her involuntary commitment, Plaintiff was forcibly medicated with a variety of mind-altering drugs, none of which were medically necessary or warranted but which in fact caused pain and sickness to the Plaintiff.

57. On or about July 20, 2005, Plaintiff was finally discharged from Three Rivers.

FOR A FIRST CAUSE OF ACTION AGAINST ALL NAMED DEFENDANTS MEDICAL NEGLIGENCE

58. Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.

59. Defendants owed Plaintiff a duty of reasonable and due care and specifically had a duty to use a degree of skill and care as reasonably prudent psychiatrists and/or other psychiatric professionals would use in examining and treating the Plaintiff.

60. Moreover, CCP had a duty to adequately and competently review medical records it obtained and only pay for medical treatment that was reasonable and necessary.

61. Defendants, individually and/or by and through their agents, employees, servants, representatives, and/or partners, breached their duties in one or more of the following particulars:

a. In failing to properly, completely and thoroughly evaluate the Plaintiff to determine if she was a danger to herself or others;

b. In continuing to commit the Plaintiff for involuntary inpatient psychiatric treatment when the Plaintiff was neither a threat to herself or others and her medical condition did not warrant such forced, involuntary, inpatient treatment;

c. In failing to timely and appropriately recognize that the Plaintiff was not a threat to herself or others and did not need to be involuntarily committed;

d. In failing to reasonably investigate the allegations that were made against the Plaintiff by her now ex-husband and son regarding her condition;

e. In failing to conduct a reasonable and prudent examination as reasonable and prudent psychiatrists, psychiatric nurses and psychiatric medical professionals would under like or similar circumstances;

f. In failing to appropriately treat and care for the Plaintiff;

g. In failing to recognize and diagnose that the Plaintiff was not a threat to herself or others;

h. In paying for medical care and treatment that was neither reasonable nor necessary and thereby creating a monetary incentive to the healthcare providers to continue to detain Plaintiff for inpatient psychiatric hospitalization; and,

i. In such additional particulars as may be learned through discovery and/or proven at trial.

62. As a direct and proximate result of Defendants' negligent, grossly negligent, wanton, and/or reckless conduct as described more fully above, Plaintiff suffered injuries and damages which included but are not necessarily limited to an extended period of involuntary commitment and hospitalization against her will, the administration of drugs and medications against her will, mental anguish and anxiety as a result of her involuntary commitment, lost wages and such other actual, special and/or consequential damages as may be proven at trial.

63. Plaintiff hereby demands judgment against the above named Defendants and seeks damages for all actual, consequential and/or special damages plus an appropriate amount of punitive damages (as determined by a jury).

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS THREE RIVERS, HOOKER, AURORA PAVILLION, STEINER, BRYAN-MOBLEY, DODDS AND BURRELL
ASSAULT

64. Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.

65. Plaintiff was placed in reasonable fear of bodily harm by the conduct of the above named Defendants and/or their agents and servants by the forcible administration of psychiatric drugs and medications which were not medically reasonable, medically warranted or medically necessary.

66. As a direct and proximate result of these Defendants' assault upon the Plaintiff by their attempts to force her to take psychiatric medications that were not medically reasonable, medically warranted or medically necessary, the Plaintiff feared for her health and safety and suffered such other damages as may be proven at trial.

67. Plaintiff hereby demands judgment against the above named Defendants for their assault upon her and seeks all actual, consequential and/or special damages plus punitive damages in an appropriate amount (as determined by a jury).

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS THREE RIVERS, HOOKER, AURORA PAVILION, STEINER, BRYAN-MOBLEY, DODDS AND BURRELL
BATTERY

68. Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.

69. The above named Defendants individually and/or through their agents, employees, and/or servants forcibly required Plaintiff to take psychiatric medications and drugs that were not medically reasonable, were not medically warranted, and were not medically necessary.

70. As a direct and proximate result, Plaintiff was sick from these medications and suffered other injuries.

71. Plaintiff hereby demands judgment against the above named Defendants for their battery upon the Plaintiff by forcing her to take unnecessary and unwarranted psychiatric medications and seeks all damages allowed by law including but not necessarily limited to all actual, consequential, and/or special damages plus punitive damages in an appropriate amount (as determined by a jury).

WHEREFORE, Plaintiff prays that the Court find for the Plaintiff and against the Defendants (jointly and severally) and that Plaintiff be awarded all damages allowed by law including but not necessarily limited to actual damages, consequential damages, special damages and punitive damages in an appropriate amount (as determined by a jury), that the Defendants be taxed with the cost of this action and that the court award such additional and further relief, in law or equity, that the Court deems just and proper.

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_____

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This ____ Day of October, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeal

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas for the Eleventh Judicial Circuit

R. Knox McMahon, Circuit Court Judge

Case No. 2007-CP-32-1981

Martha Lewin Argoe, ...Appellant,

V.

Three Rivers Behavioral Health LLC,
Psychiatric Solutions, Inc.;
Phyllis Bryant-Mobley, MD; Glenn
Hooker, MD; Aiken Regional Medical
Center; Aurora Pavilion; David A.
Steiner, MD; Cheryl C. Dodds, MD;
Doris Ann Burrell, RN; Carolina Care
Plan; James F. Walsh Jr.; G. Lewis
Argoe Jr.; and George L. Argoe III, ...Defendants,

OF WHOM, Psychiatric Solutions, Inc. is the.....Respondent.

FINAL BRIEF OF APPELLANT OUT OF TIME

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EXHIBIT
E

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STATEMENT OF THE CASE

On August 15, 2006, Appellant brought an action in the Beaufort County Court of Common Pleas against Respondents George Lewis Argoe, III, George Lewis Argoe, Jr., James F. Walsh, Ameriprise Financial Services, Malcom Lynn Norris and Pandora Jones Glover asserting various causes of action against these respondents, including setting aside influenced transactions, professional negligence, breach of fiduciary duty, breach of trust, invasion of privacy, intentional infliction of emotional distress, violation of civil rights, conspiracy, conversion, and abuse of process.

On June 13, 2007 Appellant an Amended Summons and Complaint in the Lexington County Court of Common Pleas against Three Rivers Behavioral Health, Psychiatric Solutions, Phyllis Bryant Mobley, M.D.; Glenn Hooker, M.D., Aiken Regional Medical Center, Aurora Pavilion, David A. Steiner, M.D., Cheryl Dodds, M.D., Dorris Ann Burrell, R.N., and Carolina Care Plan, James F. Walsh, Jr., G. Lewis Argoe, Jr., and G. Lewis Argoe, III as respondents. (June 13, 2007 Amended Summons and Complaint, R. p. 97).

This Complaint alleges numerous causes of action, all arising out of the same set of facts and circumstances, including (1) intentional infliction of emotional distress (vs. all Defedants); (2) Negligence and Gross Negligence (vs. Three Rivers, Mobley, Hooker, Auroroa, Steiner, Dodds, Burrell, and Carolina Care Plan); (3) False Imprisonment (vs. all Defendants); (4) Assault and Battery (vs. Three Rivers, Burrell, Dodds, and Mobley); (5) Breach of Fiduciary Duty (vs. Argoe, III); (6) Legal Malpractice (vs. Walsh); (7) Negligence (vs. Three Rivers, Dodds, Mobley and Care Plan); (8) Breach of Duty of Confidentiality and Negligence per se (vs. Dodds and Mobley); (9) Negligence per se for

violation of HIPAA (vs. Three Rivers, Dodds and Mobley); (10) Unfair Trade Practices (vs. Three Rivers); (11) Conspiracy (vs. all Respondents); (12) Abuse of Process (vs. Hooker, Aurora, Steiner, Three Rivers, Mobley, Dodds, Burrell, Argoe, Jr., Walsh and Argoe, III); (13) Defamation (vs. all Defendants); (14) Invasion of Privacy (vs. all Defendants); (15) and Public Disclosure of Private Fact (vs. all Defendants).

On March 25, 2009 counsel for Appellant received a Motion for Summary Judgment on behalf of Psychiatric Solutions who moved for summary judgment as to all causes of action asserted against it, excluding conspiracy.

Psychiatric Solutions is the successor company to Defendant Three Rivers. (April 24, 2009 Hearing Transcript at p. 7, R. p. 427).

A hearing was held before the Honorable R. Knox McMahon on April 27, 2009 on Respondent Psychiatric Solutions motion for summary judgment. (April 27, 2009 Hearing Transcript, R. p. 421; Memorandum of Law Submitted to Court at April 27, 2009 hearing, R. p. 322).

By way of Order dated January 28, 2010, Judge McMahon granted Psychiatric Solutions summary judgment as to all causes of action, except for conspiracy.

On February 19, 2010, Appellant timely filed notice of appeal from the January 28, 2010 Order. (February 10, 2010 Notice of Appeal with Attachment, R. p. 486)

STATEMENT OF FACTS

Appellant, age sixty-four (64) years, was married to Lewis M. Argoe, Jr. for forty-two (42) years. They had one (1) child, Argoe, III.

Appellant and Argoe, Jr. had marital problems for a number of years prior to the acts complained of herein. For an extended period of time leading up to June 2005,

Argoe, Jr. had been taking Appellant's valuable jewelry and personal property, bank records, mail, and money from her. Unknown to Appellant, Argoe, Jr. caused the transfer of her classic Corvette, which she had inherited, into his name and hid the same. In order to preserve and protect her properties, Appellant removed her remaining valuables from the residence and placed them in storage.

Concerned about the possibility of Appellant divorcing him, and in an effort to control Appellant and the property, without her knowledge, Argoe, Jr. went to the Orangeburg Mental Health Center on or about April 20, 2005 and spoke with a counselor about involuntarily committing Appellant to a psychiatric facility based upon a list of complaints about her, most of which reflected the parties' marital strife. In fact, the marriage was so irretrievably broken that Appellant had appointed her son, Argoe, III as agent under her Durable Power of Attorney on April 20, 2004 in the place of her husband because she did not trust Argoe, Jr. (April 20, 2004 Power of Attorney, R. p. 1).

Appellant did not know that Argoe, Jr. had enlisted Argoe, III to assist him and, in fact, they both enlisted the aid of attorney Walsh who had represented Argoe, Jr., but never had permission to represent Appellant.

At the direction of Argoe, Jr., and acting as Appellant's attorney without her knowledge or consent, Walsh prepared a deed for Argoe, III to sign as Appellant's attorney in fact that purported to transfer Appellant's valuable Beaufort County condominium and boat slips that were purchased with her inherited property into a purported Trust that was, in effect, irrevocable, and which benefited Argoe, III, not Appellant, but leaving Appellant liable for the mortgage. (May 17, 2005 Title to Real Estate, R. p. 3).

All of this was done without Appellant's knowledge or consent, and without Argoe, III having authority to sign such a deed using Appellant's Durable Power of Attorney which contained no gifting provisions.

After this deed was recorded among the public records for Beaufort County on May 27, 2005, on or about June 6, 2005, Argoe, Jr., secured an Order of Detention from the Orangeburg County Probate Court based on the same allegations he made on April 20, 2005. (June 6, 2005 Order of Detention, R. p. 7).

Based on this Order, on June 7, 2005, Appellant was apprehended and imprisoned by Orangeburg County law enforcement and, against her will, transported to the Orangeburg Mental Health Center where she saw, for the first time, a psychiatrist by the name of Hooker for several minutes in the presence of Argoe, Jr.

Pursuant to the directive of the June 6, 2005 Order of Judge Jones-Glover, Mrs. Argoe was detained by the Orangeburg County Sheriff's Department and transported to the emergency room of The Regional Medical Center Orangeburg Regional Medical Center on June 7, 2005 at 3:00 P.M. for a "mental evaluation".

The Regional Medical Center records reflect the following:

"Patient presents for the evaluation of Mental Evaluation [sic.]"

"PT STATES SHE IS NOT HERE ON HER OWN FREE WILL – STATES ASK HER HUSBAND WHY SHE IS HERE – HUSBAND STATES SHE WAS SENT HERE FROM MENTAL HEALTH FOR TEST – PT STATES SHE IS TAKING A STAND AND NOT DOING WHATEVER OTHERS WANT AND THEREFORE HER HUSBAND TOOK OUT PAPERS ON HER – PT DENIES SUCIDIAL, HOMICIDAL IDEATIONS – OR HEARING VOICES" (Emphasis Added)

"No history of anxiety, bipolar, depression, suicidal ideation, suicide attempts, psychosis, hallucinations, homicidal ideation, violence towards others, schizophrenia."

"NEUROLOGIC: Negative neurologic review of systems"

"PSYCHIATRIC: Oriented X 3. Normal affect." (Oriented to time, place and person)

"Doctor's Notes: Head CT ok. Will d/c to home to f/u with MHC. Patient's status is stabilized. The patient will be discharged, The patient will follow-up with primary care physician."

"Condition: Stable"

(Regional Medical Center Records, R. p. 8)

Mrs. Argoe was then examined by a licensed physician at Orangeburg Regional Medical Center who, instead of executing the certificate required by the statute, flat "discharged" and released Mrs. Argoe who was then returned to her home by the Orangeburg County Sheriff's Department. (Regional Medical Center Records, R. p. 11; CT Scan Records indicating negative findings, R. p. 15)

Again, no certification was issued by any licensed physician at The Regional Medical Center. Therefore, Pursuant to S.C. Code Ann. § 44-17-430, the proceedings that resulted from Judge Jones-Glover's June 6, 2005 Order of Detention, by statute, "must [have been] terminated".

Indeed, Despite the fact that he had not examined her, and despite the fact that the CT-Scan was negative and Appellant had been discharged, Hooker signed an affidavit in support of Appellant's commitment, which did not state that Appellant was either mentally ill or a danger to herself or others. (Hooker Affidavit, R. p. 154).

Based upon Hooker's affidavit and Argoe, Jr.'s allegations, Appellant was again imprisoned by Orangeburg County law enforcement and taken to Aiken Regional Medical Center (Aurora Pavilion). On the way to Aiken, with Appellant in the vehicle, the Orangeburg police officer pulled over into a convenience store, called Argoe, Jr. on

his cell phone, and waited for Argoe, Jr. so that Argoe, Jr. could be present when Appellant was taken to Aurora, all against Appellant's will.

While at Aurora, Dr. Steiner did an initial assessment of Appellant, and although he did not determine that Appellant was a danger to herself or others as required by South Carolina law in order to justify involuntary commitment, Steiner still estimated that Appellant's hospital stay would be ten (10) days (Steiner Assessment, R. p. 17).

While being held at Aurora against her will, Appellant was not only subjected a full body search, but also was forced to stay at that facility without a toothbrush, soap, deodorant, or change of clothing until she was transferred to Three Rivers, the predecessor company to Respondent Psychiatric Solutions, because Carolina Care Plan would not cover her stay at Aurora.

While Appellant was being held against her will, Argoe, Jr. through his lawyer Walsh, filed an action in Orangeburg Probate Court on June 7, 2005 seeking the appointment of Argoe, III as Appellant's Guardian and Conservator so that Argoe, III could take over Appellant's finances and make her health decisions. No notice of these proceedings or hearings or any other actions taken by Walsh, Argoe, Jr. and Argoe, III were ever personally served upon Appellant or sent to her. Appellant had no knowledge of this or any other proceeding that affected her significant personal, property, and other interests until more than a year later.

Because Appellant's health insurance with Carolina Care Plan would not cover her stay at Aurora, Appellant was transported against her will by Aiken County law enforcement to Three Rivers (the predecessor company to Respondent Psychiatric Colutions) on or about June 9, 2005. Upon arriving at Three Rivers, although there was

still no determination made that Appellant was a danger to herself or others as required by statute (Three Rivers Intake Assessment, R. p. 18), Appellant was imprisoned at Three Rivers against her will for nearly six (6) weeks during which time she was assaulted and battered and her rights were trampled.

From June 9, 2005 until she was finally discharged on or about July 20, 2005, Appellant was not found to be either a danger to herself or others, yetThree Rivers forced unnecessary and inappropriate medications on Appellant by injection and otherwise, all against her will and without justification, and required her to remain imprisoned there. The medication forced on Appellant by injection and otherwise caused her physical problems, including health issues that were visible on her EKG and other uncharacteristic readings. The medication protocol prescribed by Three Rivers, Mobley, Dobbs, and others was wrong, dangerous to Appellant's physical health, and unwarranted, especially given the fact that Appellant had been characterized as being "obstinate" because she would not admit she had a mental illness because.

Appellant was held against her will at Three Rivers based upon repetitive false statements and reports made by Dobbs and other agents and servants of Three Rivers which were based on false and misleading information provided by Argoe, Jr. and Argoe, III. Ultimately, Appellant was given a diagnosis of being bipolar.

Within Appellant's medical records, she was repetitively referred to as a "wealthy woman," but was never diagnosed as being a danger to herself or others.

Three Rivers, its employees and agents, caused Appellant's health insurance to be milked to the maximum based on false and misleading reports even though Appellant did not need hospitalization, much less therapy. Three Rivers, its employees and agents,

even secured payment extensions from Care Plan to keep Appellant even longer at that facility by making false, unbased, and self-serving reports regarding her condition.

While at Three Rivers, Appellant was held against her will, was improperly and forcefully touched and medicated, and was falsely imprisoned as at no time was she a danger to herself or others. In fact, when Appellant asked for legal counsel, Three Rivers terminated her telephone privileges, allowing her to call only Argoe, Jr. and Argoe, III.

Three Rivers brought in a consulting psychologist who, on June 14, 2005, determined that because Appellant showed no psychosis, and because the allegations of Aroge, Jr. appeared to emanate from marital strife, independent evidence of Appellant's situation should be secured by Three Rivers prior to continued treatment (Consulting Psychologist Opinion, R. p. 23).

Three Rivers totally ignored this consultation and second opinion, and its agents and servants continued to improperly assault Appellant with medication to hold Appellant against her will based upon unfounded and false allegations of Respondents Argoe, Jr. and Argoe, III, and give her a false and unbased diagnosis.

Despite being informed and knowing that Appellant was not mentally ill and was not a danger to herself or others, Three Rivers, its agents and employees, persisted on this course of deception to assist Argoe, Jr. and Argoe, III. In fact

Argoe, Jr., Argoe, III, and Walsh caused Mobley and Burrell, both "treating" mental health professionals and agents of Three Rivers, to improperly be appointed as medical examiners in the Guardianship and Conservatorship proceedings filed in Orangeburg County Probate Court. Thus, without notice to Appellant, and contrary to South Carolina law that requires non-treating medical professionals be appointed,

Mobley and Burrell, acting as agents for Three Rivers, caused false and misleading reports about Appellant's mental health to be filed upon the public records for Orangeburg County, South Carolina.

Even though the statutory law of South Carolina requires that all medical examiners conduct examinations after the date of appointment, Mobley, acting as agent for Three Rivers, signed false affidavits stating she had examined Appellant after the date of appointment which was not true because Mobley never saw Appellant after June 28, 2005.

Based upon the improper and false reports, including the report of Dodds, Appellant was "sentenced" to remain at Three Rivers for a year or, upon release, to secure outpatient treatment which was not medically necessary. Argoe, Jr. and Argoe, III continued to provide false information and history to Three Rivers and Dodds which accepted the same as true and, without investigation, continued to hold Appellant against her will.

All actions taken by Dodds were based upon unsubstantiated statements of Argoe Jr., who was trying to stave off a divorce action, by Argoe, III who had secured Appellant's condominium and was living there for next to nothing and allowing Argoe, Jr. to use a boat slip belonging to Appellant without payment; and by Walsh who was trying to gain a collateral advantage in future divorce proceedings.

Since her release, Appellant has been examined by a number of independent mental health professionals, all of whom have determined Appellant does not suffer from mental illness.

I. THE LOWER COURT ERRED BY GRANTING SUMMARY JUDGMENT AS TO APPELLANT'S CAUSE OF ACTION FOR FALSE IMPRISONMENT

At the April 27, 2010 hearing Psychiatric Solutions argued, and the lower court improperly found, that the actions of Psychiatric Solutions are protected under the doctrine of "lawful justification."

The doctrine of lawful justification is applicable to action for false imprisonment. In Law v. S. Carolina Dept. of Corr., 368 S.C. 424, 629 S.E.2d 642 (2006), our Supreme Court provided:

> "The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990); Thomas v. Colonial Stores, Inc., 236 S.C. 95, 113 S.E.2d 337 (1960). To prevail on a claim for false imprisonment, the appellant must establish: (1) the defendant restrained the appellant, (2) the restraint was intentional, and (3) the restraint was unlawful. Gist v. Berkeley County Sheriff's Dept., 336 S.C. 611, 521 S.E.2d 163 (S.C. Ct. App. 1999); Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (S.C. Ct. App. 1995); Caldwell v. K-Mart Corp., 306 S.C. 27, 410 S.E.2d 21 (S.C. Ct. App. 1991); see also Jones, 301 S.C. at 64 **(an action for false imprisonment cannot be maintained where one is arrested by lawful authority).**
>
> "The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Gist, 336 S.C. at 615. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. Jones, 301 S.C. at 65." (Emphasis Added)

In Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (1992) our Supreme Court found that the issue of probable cause is a question of fact and ordinarily one for the jury. Likewise, the question of whether Defendant Dodds acted under lawful authority is also a question of fact for the jury.

The case most applicable to the one here is Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (S.C. Ct. App. 1987), wherein our Court of Appeals provided:

> The appellant next claims that because she was found not to be mentally ill, her custodial detention for examination by Dr. Davis and confinement to the State Hospital constitute false imprisonment. We disagree. Where **one is arrested by lawful authority, an action for false imprisonment cannot be maintained.** Bushardt v. United Inv. Co., 121 S.C. 324, 113 S.E. 637 (1922); Watkins v. Mobil Oil Corp., 281 S.C. 79, 313 S.E.2d 641 (S.C. Ct. App. 1984). **Even if the arrest is improvidently procured, the wronged party's remedy lies in an action for malicious prosecution.** Bushardt, 121 S.C. 324
>
> **The record supports only the conclusion that appellant was lawfully taken into custody and detained pursuant to provisions of S.C. Code Ann. § 44-17-410, 1976. The actual taking into custody of appellant was performed by a peace officer by order of the probate judge in accordance with provisions of S.C. Code Ann. § 44-17-430, 1976.** We therefore hold that an action for false imprisonment cannot be maintained against the respondents." (Emphasis Added)

Here, Appellant was not taken into custody on an "improvidently procured" order of detention. In fact, there was no valid order of detention that was in effect at the time the Appellant was committed to the Aurora Pavilion, and subsequently transported to Three Rivers.

Despite this fact, Defendants failed to heed and follow the June 14 2005 second opinion of Tammi Leonhardt, an independent psychologist, that the facts surrounding the detention looked like a marital dispute, and there should be verification of facts given by family members. (Leonhardt Opinion as part of Psychiatric Solutions'/Three Rivers Medical File on Appellant, R. p. 23).

Dr. Leonhardt's Consultation Form included the following findings:

> "At the time of this assessment, Ms. Argoe presented as an attractive woman with spontaneous affect and [????] mood. Thought process during interview was clear, coherent, and goal-directed. She denies any experiences of auditory or visual hallucinations, mood [????], sleep or appetite disturbances or increased suspiciousness. She alleges that her husband is abusive, a heavy drinker, and that he put her in the hospital. She reports that she drew a 'line in the sand' approximately 1 ½ years ago, moving into own room, putting lock on her door, and no longer cooking

for spouse but instead going out to eat. She acknowledges mistrust of husband and marital conflict but denies acute distress or psychological symptoms/problems.

...

"Despite level of defensiveness, some areas where she described problems are of greater intensity than is typical for defensive clients and merit further inquiry, especially in light of her allegations of marital abuse include: stress in the environment, unsupportive family or friends, and suspicions."

Importantly, under diagnostic impressions, Dr. Leonhardt provided:

"I. Diagnosis Deferred
II. Diagnosis Deferred
III. Deferred
IV. marital conflict; alleged victim of abuse" emphasis added)

Appellant was determined to have been wrongfully diagnosed and detained by this Respondent not only by her expert (Affidavit of Dave M. Davis, MD, R. p. 178).

In addition, after release from Three Rivers, Appellant was seen by Dr. Charles Reamy and Natalie Trow, R.N., whose depositions were taken in Appellant's divorce proceedings.

At his deposition Dr. Reamy testified as follows (Reamy Deposition Excerpts pp. 5-19, R. p. 85):

5

6 Q Okay. Would you state full name again,
7 sir?
8 A Charles Judson Reamy.
9 Q And what is your occupation, please?
10 A I'm a psychiatrist with Coastal Empire
11 Mental Health Center.
12 Q Okay. Would you give us the benefit of
13 your training and education and experience,
14 please?
15 A Sure. I graduated from medical school
16 at West Virginia University School of Medicine;
17 that would have been in '93. Trained from '93
18 until '97; did my internship and residency at
19 Medical University of South Carolina in

20 Charleston. And since then I have worked in a
21 variety of settings; some private practice, did
22 some hospital work and more recently been doing
23 mental health center work in North Carolina
24 before coming down here as well.
25 Q Are you certified by any entity or

6

1 WARNER - REAMY (DIRECT EXAMINATION)
2 organization?
3 A I am Board certified.
...

9

10 A Ms. Argoe came to us initially after a
11 hospitalization. She had been discharged with
12 the diagnosis of bipolar affective disorder at
13 that time.
14 Q What is bipolar affective disorder?
15 A Bipolar affective disorder is an illness
16 that used to be known as manic depression. These
17 are people who typically have both manic and
18 depressive symptoms. Classic manic symptoms
19 might include an extended period of time with
20 excessive energy or decreased need for sleep,
21 racing thoughts. People may become more
22 talkative. They can become grandiose, high risk
23 behavior sometimes. They may have increased
24 goal-directed activity, take on many tasks and in
25 extreme cases can become psychotic so have a hard

10

1 WARNER - REAMY (DIRECT EXAMINATION)
2 time telling what's real and what's not. So to
3 get a diagnosis somebody has to have had either a
4 manic episode or a mixed episode where they had
5 both manic and depressive symptoms. Now, when
6 she came to us, we had -- you know, the history
7 we got was a bit sketchy and the records we got
8 were fairly limited at that time. We got more
9 later on and so --
10 Q You received the records from which
11 facility?
12 A We ultimately received the records from
13 her hospitalization. I don't remember their
14 name.
15 Q Three Rivers?
16 A Yes.
17 Q Okay.

18 A So we ultimately did get those and they
19 did, in fact, have her diagnosed with bipolar
20 affective disorder. The symptoms that they had
21 indicated were much -- indicated quite a bit of
22 paranoia, unusual behaviors around her paranoia;
23 and so although not convinced about the bipolar
24 diagnosis, it appeared that she had significant
25 symptoms, in fact, was there for a few weeks.

11

1 WARNER - REAMY (DIRECT EXAMINATION)
2 And actually since I wasn't convinced of the -- I
3 think I put in my initial assessment bipolar
4 affective disorder by history, which means I
5 wasn't totally sold on it but it was at least a
6 working diagnosis at that time and hopefully
7 would sort it out over time.

...

25 Q Okay. I'm going to get to the end of

12

1 WARNER - REAMY (DIRECT EXAMINATION)
2 process before I get to the middle of it. Did
3 you ultimately come to any conclusion as far as
4 the diagnosis of Mrs. Argoe?
5 A That's a very good question. I wish I
6 had a good answer. I can tell you this: Again,
7 she came to us with a diagnosis of bipolar
8 affective disorder; not totally sold. However,
9 the records that we did get and some of the
10 history that I'd gotten from the Argoes indicated
11 a definite change in behavior and what they
12 thought was paranoia.
13 While I followed her I never witnessed
14 any clear evidence of bipolar disorder. She
15 never looked manic or depressed or mixed manic
16 and depressed when I saw her. She was on quite
17 low doses of medicine. She was on not even a
18 typical mood stabilizing medication, medications
19 that are used for bipolar disorder. She was on
20 an antipsychotic medication at a relatively low
21 dose, and she said -- at the start she said, you
22 know, this is -- made it clear I do not believe I
23 have mental illness, do not believe I have any
24 symptoms. This is what I'm willing to do and
25 this is what I'm willing to take. And so she

13

1 WARNER - REAMY (DIRECT EXAMINATION)

2 took these medicines, again, relatively low doses
3 and gradually tapered off them by the time she
4 was done working with us. So, you know, although
5 that in and of itself doesn't mean she doesn't
6 have anything. You know, she didn't show any
7 significant symptoms on the low doses of
8 medicine; I guess that's worth something.
9 Bipolar disorder is something that can be very
10 hard to diagnose. People present in different
11 ways, and some people can go long periods of time
12 without symptoms with or without medications and
13 so it just gets kind of complicated. I know this
14 is a long-winded answer. My answer is really I
15 do not know, I really do not know what she has.
16 Too much conflicting information and what you've
17 brought up, and I don't know what's reliable and
18 what's not anymore. So I simply do not know.

13

19 Q Other than history do you have anything
20 to go by?
21 A No, history -- what I have to go by is
22 primarily based on history, the records from the
23 hospital and what Mrs. Argoe's husband and son
24 have said at times. But I've never -- you know,
25 when I've seen her, when she's met with me, I

14

1 WARNER - REAMY (DIRECT EXAMINATION)
2 have not witnessed any symptoms.

15

5 Q . Did you, Doctor, see any evidence in
6 your personal business with Ms. Argoe that she
7 has this manic --
8 A Some manic depression or bipolar
9 illness?
10 Q Yes.
11 A I did not see, myself, any evidence.
...

19

9 Q Okay. Did you see any evidence that she
10 was impaired by mental illness, mental
11 deficiency, use of drugs or any cause to the
12 extent that she lacked sufficient understanding
13 to make or communicate responsible decisions
14 about her property?
15 A Again, based on our face-to-face
16 assessments, I didn't see anything.

17 Q Now, if you add to that the history from
18 Ms. Trow, did you see anything there that would
19 give you any indication that she would meet
20 either of those definitions?
21 A **Ms. Trow did not – when I talked with**
22 **her, did not witness any of that either.**

18

23 Q Okay. At that time or at any time
24 during which you were seeing her, was Mrs. Argoe
25 impaired by reason of mental illness, chronic use

19

1 WARNER - REAMY (DIRECT EXAMINATION)
2 of drugs or other cause to the extent that she
3 lacked sufficient understanding or capacity to
4 make or communicate responsible decisions about
5 herself?
6 A **Based on what I just saw face to face**
7 **with her, I never saw any evidence that she was**
8 **impaired, so.**

Natalie Trow, R.N., testified as follows (Exhibit 5 to Memorandum in Opposition to Motion for Summary Judgment, R. p. 96; R. p. 391):

10

7 Q At any time, Ms. Trow, from the time
8 that you began the treatment plan at Coastal
9 Empire, did you find her to be a person who was
10 impaired because of mental illness, mental
11 deficiency, chronic use of drugs, intoxication to
12 the extent that she lacked sufficient
13 understanding or capacity to make or communicate
14 responsible decisions about herself or her
15 property?
16 A I didn't personally see that, no.
17 Q **Okay. Is there anything that you know**
18 **that's in the record that would support a finding**
19 **that she had that type of illness?**
20 A **Just by her history from Three Rivers.**

In addition, the flowing affidavits have been submitted on behalf of the Appellant:

Affidavit of Almand Barron, Esquire, who was appointed Guardian ad Litem for the Appellant in the Family Court proceedings until the Commitment proceedings were resolved who stated in pertinent part:

> "On December 18, 2006 I attended the depositions of Dr. Charles Reamy and Natalie Trow, RN, as nurse at the Beaufort County Department of Mental Health. These depositions were taken in Beaufort, South Carolina. Dr. Reamy and Ms. Trow treated Ms. Argoe on an outpatient basis, managed her medications and otherwise provided follow-up care to her after her release from the hospital.
>
> ...
>
> Dr Reamy is a psychiatrist employed by Coastal Empire Community Mental Health Center. He testified that his affidavit regarding Ms. Argoe's mental health was based on records previously presented to him. He also testified that he had not seen Ms. Argoe exhibit symptoms of bi-polar disorder and that he was not surprised to hear that she was working and living independently. He also testified that, based on what he had seen, he does not believe that Ms. Argoe is incapacitated. During the course of his treatment of Ms. Argoe, she was taking various psychotropic drugs used to treat bi-polar disorder. At this time it is my understanding Ms. Argoe is no linger taking those drugs and tapered off those medications during her treatment with Dr. Reamy.
>
> ...
>
> "...Ms. Trow testified that the notations in Ms. Argoe's chart as to bi-polar disorder were related to her history as outline in prior medical records. Ms. Trow testified that she had not seen any evidence of bi-polar disorder in her interactions with Ms. Argoe." ("Exhibit 6" to Memorandum in Opposition to Motion for Summary Judgment – Affidavit of Almand Barron, R. p. 149; R. p. 397).

Factually, it can be proved that Appellant's former Husband had a history of threatening Appellant's care providers, further substantiating Appellant's claim that the history provided to Three Rivers and Dodds was suspect.

Dr. Reamy's notes from May 16, 2006, provide:

> "Telephone contact [re?] Martha Argoe (husband). Very different interaction than we have ever had. In the past Mr. Argoe has been very pleasant, appreciative. Today he is very agitated, hostile, threatening towards me (repeatedly brings up court order & even talks of lawsuit/"someone will pay" if his demands are not met immediately.) He initially demands I send a letter to her employer stating she can't work

> after dark or on weekends. He later requests a letter to be given to him two weeks when he comes in for his Wife's appointment. Discussed with [?????] McDaniel. She was upset with the way Mr. Argoe treats her. She offered an appointment for Mrs. Argoe today & he declined.
>
> "After multiple demands for a statement from Mr. Argoe, I have repeatedly told him I will speak with Dr. Treadway about the best way to manage the situation and will review with him two weeks when he comes in." (Exhibit 8 to Memorandum in Opposition to Motion for Summary Judgment– Coastal Empire Service Notes, R. p. 28; R. p. 417).

Based upon the forgoing, Respondent Psychiatric Solutions, the successor in interest to Three Rivers, was on notice that the order of detention was void. Therefore, Appellant's cause of action for false imprisonment should not have been dismissed.

As an additional matter, The June 6, 2005 Order of Detention specifically states that it is issued pursuant to S.C. Code Ann. § 44-17-430 and provides that "...the individual taken into custody shall have the right to representation by an attorney. If within the twenty-four (24) hours the person in custody is not examined by a licensed physician, or if upon examination, the physician does not execute the certification provided for in S.C. Code Ann. § 44-17-410(2), the individual in custody shall be immediately released." (See June 6, 2005 Order of Detention, R. p. 7).

S.C. Code Ann. § 44-17-430, the statute referred to in the June 6, 2005 Order of Detention, provides:

> "If within the twenty-four hours the person in custody is not examined by a licensed physician or, if upon examination the physician does not execute the certification provided for in S.C. Code Ann. § 44-17-410(2), **the proceedings must be terminated** and the individual in custody must be released immediately." (Emphasis Added)

Again, Mrs. Argoe was initially taken into custody by an Orangeburg County Sheriff's Deputy and transported to The Regional Medical Center on June 7, 2005 at 3:00 P.M. for a "mental evaluation" pursuant to the June 6, 2005 Order of Detention.

The Regional Medical Center records for the "mental evaluation" reflect the following:

> "Patient presents for the evaluation of Mental Evaluation [sic.]"
>
> "PT STATES SHE IS NOT HERE ON HER OWN FREE WILL – STATES ASK HER HUSBAND WHY SHE IS HERE – HUSBAND STATES SHE WAS SENT HERE FROM MENTAL HEALTH FOR TEST – PT STATES SHE IS TAKING A STAND AND NOT DOING WHATEVER OTHERS WANT AND THEREFORE HER HUSBAND TOOK OUT PAPERS ON HER – PT DENIES SUCIDIAL, HOMICIDAL IDEATIONS – OR HEARING VOICES" (Emphasis Added)
>
> "No history of anxiety, bipolar, depression, suicidal ideation, suicide attempts, psychosis, hallucinations, homicidal ideation, violence towards others, schizophrenia."
>
> "NEUROLOGIC: Negative neurologic review of systems"
>
> "PSYCHIATRIC: Oriented X 3. Normal affect." (Oriented to time, place and person)
>
> "Doctor's Notes: Head CT ok. Will d/c to home to f/u with MHC. Patient's status is stabilized. The patient will be discharged, The patient will follow-up with primary care physician."
>
> "Condition: Stable"
>
> (TRMC HEALTH EMERGENCY RECORD – Emphasis added, R. p. 8)

Therefore, within 24 hours of the June 6, 2005 Order of Detention issued by Jones-Glover, Mrs. Argoe was taken to The Regional Medical Center in Orangeburg against her will pursuant to the June 6, 2005 Order of Detention.

In accordance with S.C. Code Ann. § 44-17-430, Mrs. Argoe was examined by a licensed physician at Orangeburg Regional Medical Center who, instead of executing the certificate required by the statute, "discharged" and released Mrs. Argoe who was then returned to her home by the Orangeburg County Sheriff's Department.

However, on June 8, 2005, the day after her release from The Regional Medical Center, Mrs. Argoe was taken into custody a second time pursuant to the same June 6, 2005 Order of Detention and was then transported to Aiken Regional (Aurora Pavilion).

Therefore, the same June 6, 2005 Order of Detention was used to take Martha L. Argoe into custody twice: First, on June 7, 2005 when she was taken to Orangeburg Regional Medical Center and then released, and Second, on June 8, 2005 when she was taken to Aurora Pavilion. Use of this same order the second time was without subject matter jurisdiction.

Importantly, no certification was signed by any physician within twenty-four (24) hours after Martha L. Argoe was detained on June 7, 2005 and taken into custody as is required by S.C. Code Ann. § 44-17-430. Mrs. Argoe was released by the Orangeburg Regional Medical Center and returned home after being detained. Therefore, by statute, the proceedings "must" have been terminated and no longer existed.

It is the duty of the South Carolina courts to assure that the rights of allegedly incapacitated individuals are protected. Cumbie v. Cumbie, 245 S.C. 107, 139 S.E.2d 477 (1964).

To divest competent persons "...of any rights, the proceedings must comply strictly with the law." S. Carolina Dept. of Soc. Services v. McDow, 276 S.C. 509, 280 S.E.2d 208 (1981) at 209. (See also Ex parte Hineline, 166 S.C. 352, 164 S.E. 887 (1932))

And if a proceeding divests one of fundamental rights, without complying with mandatory statutory requirements, any order or judgment of the court is "void for want of jurisdiction." (S. Carolina Dept. of Soc. Services, 280 S.E.2d at 209)(See also Ex

parte Kibler, 53 S.C. 461, 31 S.E. 274 (1898); Ex parte Rountree, 51 S.C. 405, 29 S.E. 66 (1898); Lister v. Gossett, 239 S.C. 22, 121 S.E.2d 235 (1961)(See also In re Cogdell's Estate, 236 S.C. 404, 114 S.E.2d 562 (1960) Finding that protective proceedings were *void* based upon the failure of the Probate Court to strictly comply with the statutory examination requirements.)

Here, an examination of S.C. Code Ann. § 44-17-430 which is referenced in the June 6, 2005 Order of Detention issued by Judge Jones-Glover, clearly states:

> "During the person's detention the person must be examined by at least one licensed physician as provided for in S.C. Code Ann. § 44-17-410(2). The individual taken into custody has the right to representation by an attorney. If within the twenty-four hours the person in custody is not examined by a licensed physician or, if upon examination the physician does not execute the certification provided for in S.C. Code Ann. § 44-17-410(2), the proceedings *must* be terminated and the individual in custody must be released immediately." (Emphasis Added)

Under the rules of statutory interpretation, use of words such as "shall" or "must" indicates the legislature's intent to enact a mandatory requirement. See e.g., In re Matthews, 345 S.C. 638, 550 S.E.2d 311 (2001); S. Carolina Police Officers Ret. Sys. v. City of Spartanburg, 301 S.C. 188, 391 S.E.2d 239 (1990); Starnes v. S. Carolina Dept. of Pub. Safety, 342 S.C. 216, 535 S.E.2d 665 (S.C. Ct. App. 2000).

Here, within 24 hours of the June 6, 2005 Order of Detention issued by Jones-Glover, Mrs. Argoe was taken to The Regional Medical Center in Orangeburg against her will pursuant to the June 6, 2005 Order of Detention.

In accordance with S.C. Code Ann. § 44-17-430, Mrs. Argoe was then examined by a licensed physician at Orangeburg Regional Medical Center who, instead of executing the certificate required by the statute, "discharged" and released Mrs. Argoe who was then returned to her home by the Orangeburg County Sheriff's Department.

No certification was issued by any licensed physician at The Regional Medical Center as required by S.C. Code Ann. § 44-17-430. Therefore, pursuant to that statute, the proceedings that resulted from Judge Jones-Glover's June 6, 2005 Order of Detention, "must [have been] terminated" thereby divesting the Court of jurisdiction.

In South Carolina and in every state and federal court in the United States, lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court because subject matter jurisdiction is the power of a court to hear cases in the general class to which the proceedings in question belong. (See Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994).

Based upon the forgoing, Mrs. Argoe was illegally detained against her will (on and after June 7, 2005) based upon the void and terminated June 6, 2005 Jones-Glover Order of Detention in a proceeding that, by operation of law, had been terminated and ended with Mrs. Argoe's discharge from The Regional Medical Center. (June 6, 2005 Order of Detention, R. p. 7).

Therefore, it was improper for the lower court to find that "Appellant was taken into custody pursuant to a lawful order...and no cause of action can be maintained against Psychiatric Solutions.

II. THE LOWER COURT ERRED BY GRANTING SUMMARY JUDGMENT AS TO APPELLANT'S CAUSE OF ACTION FOR DEFAMATION

The lower court erred in finding that the Appellant's cause of action for defamation should be dismissed because Three Rivers provided treatment as order by the Court. (January 28, 2010 Order at p. 7)

Again, Defendants failed to heed and follow the June 14, 2005 second opinion of Tammi Leonhardt, an independent psychologist, that the facts surrounding the detention looked like a marital dispute, and there should be verification of facts given by family members. (Leonhardt Opinion as part of Psychiatric Solutions'/Three Rivers Medical File on Appellant, R. p. 23).

Dr. Leonhardt's Consultation Form included the following findings:

> "At the time of this assessment, Ms. Argoe presented as an attractive woman with spontaneous affect and [????] mood. Thought process during interview was clear, coherent, and goal-directed. She denies any experiences of auditory or visual hallucinations, mood [????], sleep or appetite disturbances or increased suspiciousness. She alleges that her husband is abusive, a heavy drinker, and that he put her in the hospital. She reports that she drew a 'line in the sand' approximately 1 ½ years ago, moving into own room, putting lock on her door, and no longer cooking for spouse but instead going out to eat. She acknowledges mistrust of husband and marital conflict but denies acute distress or psychological symptoms/problems.
>
> ...
>
> "<u>Despite level of defensiveness, some areas where she described problems are of greater intensity than is typical for defensive clients and merit further inquiry</u>, especially in light of her allegations of marital abuse include: stress in the environment, unsupportive family or friends, and suspicions."

Importantly, under diagnostic impressions, Dr. Leonhardt provided:

> "I. Diagnosis Deferred
> IV. Diagnosis Deferred
> V. Deferred
> <u>IV. marital conflict; alleged victim of abuse</u>" (emphasis added)

Further, because the Order of Detention is *void ab* initio for the reasons set forth above, no privilege attaches to the defamatory communications about the Appellant.

Based upon the forgoing, the lower court erred in granting Respondent Psychiatric Solutions summary judgment as to Appellant's cause of action for defamation.

III. THE LOWER COURT ERRED IN GRANTING PSYCHIATRIC SOLUTIONS SUMMRY JUDGMENT AS TO APPELLANT'S CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The lower Court erred when it grated summary judgment based upon the finding that "Three Rivers at all times acted in a reasonable manner.

As previously addressed, Appellant was detained against her will and forced to take medication against her will. Further, based upon the opinion of Tami Leonhardt which went unheeded, and the invalid order of detention, Psychiatric Solutions had no authority or justification for detaining Appelant against her will.

Based upon the forgoing, the actions of Respondent Psychiatric Solutions was so extreme and outrageous as to exceeds all possible bounds of decency. (Holtzscheiter v. Thomson Newspapers, Inc., 306 S.C. 297, 411 S.E.2d 664 (1991) overruled in later appeal, 332 S.C. 502, 506 S.E.2d 497 (1998)).

CONCLUSION

Based upon the forgoing, the lower court erred in granting Respondent Psychiatric Solutions motion for summary judgment, and this Court should remand these proceedings for determination by the lower court.

Respectfully Submitted,

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Columbia, South Carolina
September 7, 2010

STATE OF SOUTH CAROLINA
In The Court of Appeal

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas for the Eleventh Judicial Circuit

R. Knox McMahon, Circuit Court Judge

Case No. 2007-CP-32-1981

Martha Lewin Argoe, ...Appellant,

V.

Three Rivers Behavioral Health LLC, Psychiatric Solutions, Inc.; Phyllis Bryant-Mobley, MD; Glenn Hooker, MD; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; Carolina Care Plan; James F. Walsh Jr.; G. Lewis Argoe Jr.; and George L. Argoe III, ...Defendants,

OF WHOM, Psychiatric Solutions, Inc. is the.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellant's Final Brief complies with Rule 211(b), *South Carolina Appellate Court Rules.*

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OF WHOM, Psychiatric Solutions, Inc. is the.....Respondent.

CERTIFICATE OF SERVICE

I, Israel Stone, a legal assistant for the law firm of Warner, Payne & Black, L.L.P./ElderLaw Services of South Carolina, P.A., attorneys for Martha Lewin Argoe, do hereby certify that on this date I caused a copy of Final Brief of Appellant Out of Time, together with Certificate of Counsel to be served upon the party listed below by depositing a copy of same in the United States Mail, postage pre-paid, addressed to the following:

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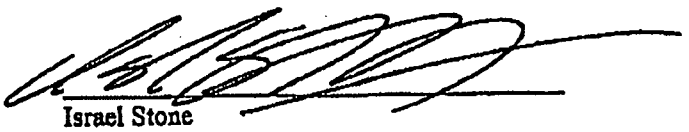

Israel Stone

Columbia, South Carolina
September 7, 2010

State of South Carolina)
)
County of Lexington)

Martha Lewin Argoe,) 2007-CP-32-1981
)
Plaintiff,)
)
vs.) Transcript
)
Three Rivers Behavioral) of
Health, L.L.C.,)
Psychiatric Solutions,) Recording of
Inc., Phyllis Bryant-) South Carolina
Mobley, MD, Glenn) Supreme Court Hearing
Hooker, MD, Aiken)
Regional Medical Center,) Recorded Wednesday,
Aurora Pavilion, David) April 20, 2011
Steiner, MD, Cheryl C.)
Dodds, MD, Doris Ann)
Burrell, RN, Carolina)
Care Plan, James F.)
Walsh, Jr., G. Lewis)
Argoe, Jr. and George L.)
Argoe, III,)
)
Defendants.)

EXHIBIT
F

Transcribed by
Audrey S Beebe

APPEARANCES

Presiding: Chief Justice Jean H. Toal
Justice Donald W. Beatty
Justice John W. Kittredge
Justice Costa M. Pleicones
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1 PROCEEDINGS
2 CHIEF JUSTICE TOAL: Please be seated. Sub judice for
3 oral argument this morning is Martha Lewin Argoe
4 against Three Rivers Behavioral Health and others.
5 You may proceed.
6 MR. BLACK: Madam Chief -- Chief Justice, Justices of
7 the court, may it please the Court. My name is
8 Charles Black. I'm with the firm of Warner, Payne
9 & Black, and I'm pleased to be before you here
10 today continuing a case that was instituted by my
11 late partner Jan Warner. The Court may recall that
12 we were before you about this time last year with
13 an appeal with another defendant in this same case.
14 As you may recall, what this case really stems
15 from was a commitment proceeding and the ensuing
16 retention of Ms. Argoe at Three Rivers for about
17 six weeks. Ms. Argoe is here with us in the
18 courtroom today seated over here behind my partner
19 Mr. Payne.
20 What we've appealed at this point is -- is an
21 appeal against -- with respect to defendant
22 Psychiatric Solutions. They are the successor in
23 interest to Three Rivers. They -- through a stock
24 purchase arrangement. We had alleged several
25 causes of action against Psychiatric Solutions.

1 The circuit court granted their summary judgment
2 motion as to intentional infliction of emotional
3 distress, as to false imprisonment, and as to
4 defamation. There were two other causes of action
5 that we voluntarily withdrew at the time that --
6 that hearing took place. There are -- there
7 remains a conspiracy count -- or conspiracy cause
8 of action --
9 JUSTICE BEATTY: Excuse me for interrupting.
10 MR. BLACK: -- involving --
11 JUSTICE BEATTY: Can I --
12 MR. BLACK: Yes?
13 JUSTICE BEATTY: Can I ask you a quick question?
14 MR. BLACK: Yes, sir.
15 JUSTICE BEATTY: In your opinion, what is the efficacy
16 of Judge Goodstein's order? It was not appealed.
17 MR. BLACK: That's correct, Your Honor. And -- and sort
18 of -- what that was -- that was sort of a
19 collateral action that was brought to vacate the
20 detention order after the fact --
21 JUSTICE BEATTY: But didn't she find --
22 MR. BLACK: -- and sort of clear up --
23 JUSTICE BEATTY: Didn't she --
24 MR. BLACK: -- the record.
25 JUSTICE BEATTY: -- find that the commitment was -- was

1 valid --
2 MR. BLACK: She did find that --
3 JUSTICE BEATTY: -- under the law?
4 MR. BLACK: She did, Your Honor. She did find that the
5 commitment was valid. At the time that the circuit
6 court ruled on the -- the -- the present causes of
7 action that are at issue, Judge Goodstein -- that
8 issue had actually been brought in the -- the --
9 the probate court with Judge Provence and -- and --
10 JUSTICE BEATTY: Well, why -- why wouldn't it be res
11 judicata?
12 MR. BLACK: Well, it -- it may be as to the issue of the
13 validity of that order. I think certainly some of
14 the -- the -- the factual situations surrounding
15 how that order took place and -- and --
16 JUSTICE BEATTY: (Inaudible.)
17 MR. BLACK: -- and how it was entered. But -- but not
18 only --
19 JUSTICE BEATTY: But your claim -- excuse me for
20 interrupting you again, but your claim is based on
21 your allegations that the commitment was invalid;
22 is that not correct?
23 MR. BLACK: Well, I -- I think there's -- it's --
24 there's sort of two parts to it, Your Honor. It's
25 not only the way she was initially committed but

1 the length of time that she remained at Three
2 Rivers. The -- you know, the initial commitment
3 takes place --
4 JUSTICE BEATTY: Judge Provence discussed that as well
5 saying the continuing commitment was -- was
6 justifiable and valid under the law, and Judge
7 Goodstein dealt with that as well. So why wouldn't
8 --
9 MR. BLACK: Well --
10 JUSTICE BEATTY: -- it be res judicata and prevent your
11 claims here today?
12 MR. BLACK: Well, everybody keeps going back to that
13 idea about that initial commitment, but -- but on
14 the initial commitment, remember, that's Dr. Hooker
15 who's seen her once, maybe twice if you -- you give
16 him the idea that she came back on June 8th.
17 You've got Dr. Steiner over in Aiken who sees her
18 initially and then says, "Yes. She needs to be
19 committed," and he says it should be about ten
20 days. But at some point through the process of --
21 of having her continue to have to stay at Three
22 Rivers, at some point that has to shift to Three
23 Rivers. They're the ones driving the train at that
24 point. And even -- even if there was originally an
25 initial appropriate commitment, our Dr. Davis, in

1 his affidavit, says, "Look, based on everything I
2 see in the medical records, there's no way you can
3 justify this -- this continued course of treatment
4 for -- for six weeks."
5 And -- and that's really sort of the second
6 prong of it. Even if it was initially okay, the
7 fact that they kept her there and really there's no
8 -- no outside, independent party coming in and
9 evaluating her. You've got the entity that's
10 treating her that's getting paid to treat her as
11 being the one saying, "Oh, yeah. She needs to stay
12 here." And so at some point, I think that -- that
13 has to come into play with it: that even if she
14 was there appropriately initially, when this thing
15 drags on week after week after week, at some point
16 that -- that -- that's on Three Rivers. They can't
17 say, "Well, gee, you know, we're relying on what
18 Hooker said from his initial consultation. We're
19 relying on what Steiner said in his certification."
20 JUSTICE BEATTY: But in your briefs you don't argue
21 these points that you are making now that our --
22 the basis of your claim is on the commitment after
23 the initial commitment -- the -- the extent of the
24 stay.
25 MR. BLACK: Well, but --

1 JUSTICE BEATTY: But that is not argued here in your
2 briefs.
3 MR. BLACK: Well, but I think you have to look at the
4 conspiracy count and how that factors in because a
5 lot of these causes of action are -- are related.
6 The conspiracy cause of action essentially says,
7 "We think this is part of a conspiracy, that the
8 Three Rivers conspired with the other -- other
9 defendants to keep her there so they could continue
10 to -- to collect the reimbursement long past the
11 time that she needed to be there."
12 And again, Dr. Davis's affidavit in support --
13 or in opposition of the motion for summary judgment
14 said, "Yeah. I don't see where this is justified."
15 And so, if they've got this -- if they're --
16 JUSTICE BEATTY: Justified initially --
17 MR. BLACK: -- involved in a conspiracy --
18 JUSTICE BEATTY: Justified initially or continued
19 treatment?
20 MR. BLACK: His -- his affidavit says, "This is a very
21 unusual length of time, six weeks or 41 days as an
22 inpatient. That's an unusual situation. I don't
23 see any justification for it. When I met with her,
24 my evaluation of her, there's no justification for
25 this diagnosis of bipolar disorder." And so if

1 they're involved in -- and taking those allegations
2 as true, if they're involved in a conspiracy to try
3 to -- to stretch this thing out to max out the
4 reimbursement, then certainly that would appear to
5 be outrageous conduct, and certainly, if they're
6 doing it -- keeping her there for an improper
7 purpose, they've gone outside the scope of that
8 initial commitment --
9 JUSTICE BEATTY: Well, let me --
10 MR. BLACK: -- where you do have the false imprisonment.
11 JUSTICE BEATTY: Well, let me ask you this question:
12 Are you conceding, then, that the initial
13 commitment was lawful?
14 MR. BLACK: I think it was done very cavalierly. I
15 think if you look at the -- the -- the --
16 JUSTICE BEATTY: Is it lawful?
17 MR. BLACK: I think that decision's been made by Judge
18 Goodstein -- Goodstein and wasn't appealed.
19 JUSTICE BEATTY: Okay.
20 MR. BLACK: I think we're probably --
21 JUSTICE BEATTY: So we --
22 MR. BLACK: -- stuck with that.
23 JUSTICE BEATTY: -- have a lawful commitment.
24 MR. BLACK: And -- and, again -- but -- but even if it's
25 lawful to begin with, at some point it passed over

1 to being unlawful when they continue to -- to keep
2 her there beyond anything that's -- that's --
3 that's sort of reasonable. Again, Steiner says,
4 "Oh, this ought to be about a ten-day commitment.
5 Yeah. After a ten-day course of treatment in the
6 hospital, she should be able to be discharged
7 home."
8 JUSTICE BEATTY: But this is a totally different
9 argument than what's in your brief, unless I
10 misread it three or four times.
11 MR. BLACK: Well, but I -- but, again, I think it's all
12 -- it all fits in together as part and parcel of
13 the conspiracy theory. And, again, if -- if
14 they're involved in this conspiracy idea, then how
15 can the rest of this be okay?
16 CHIEF JUSTICE TOAL: Well, all right. Could we just
17 look at the time frames here a little bit?
18 Emergency commitment June 6th. Emergency room
19 examination June the 7th. Hooker's examination
20 June the 8th. June the 9th, because of insurance,
21 transferred to Three Rivers. June 10th, Three
22 Rivers does notification of emergency admission
23 appointment and designated exams. June the 13th
24 Lawson issues an order for continued
25 hospitalization and a hearing for June the 21st.

1 June the 14th, notified with court-appointed
2 counsel. June the 21st, a hearing conducted, and
3 Judge Lawson indicates continued treatment with
4 mandatory outpatient to follow for a period not to
5 exceed 12 months. July the 18th, probate court
6 appoints Dr. Dodds to see whether she needs a
7 guardian. The 20th, she's discharged in the care
8 of her son. All right. Then on June the -- and
9 that's all in 2005. Where -- tell me where the --
10 MR. BLACK: Well, Your Honor --
11 CHIEF JUSTICE TOAL: -- where -- where in that time
12 scenario did the outrageous, terrible conduct take
13 place? It looks like the -- the --
14 MR. BLACK: Well -- well, Your Honor, one observation
15 I'd make in terms of the -- the timeline there:
16 Certainly the detention order was issued on the
17 6th. She was picked up for the first time on the
18 7th because that's when she's at the ER; that's --
19 CHIEF JUSTICE TOAL: All right.
20 MR. BLACK: -- when all those documents are -- are --
21 CHIEF JUSTICE TOAL: All right.
22 MR. BLACK: -- dated.
23 CHIEF JUSTICE TOAL: All right.
24 MR. BLACK: Dr. -- Dr. Hooker, in his affidavit, says,
25 "The day I saw her, I sent her to the ER to be

1 evaluated."
2 CHIEF JUSTICE TOAL: All right.
3 MR. BLACK: So despite the fact that his affidavit says,
4 "I saw her on June 8th," it had to have been June
5 7th because --
6 CHIEF JUSTICE TOAL: Well, but that --
7 MR. BLACK: -- that's the -- the -- the --
8 CHIEF JUSTICE TOAL: -- doesn't make any difference --
9 MR. BLACK: -- date all the records are.
10 CHIEF JUSTICE TOAL: -- to what we were talking about.
11 MR. BLACK: Well -- well, but we're --
12 CHIEF JUSTICE TOAL: (Inaudible.)
13 MR. BLACK: But -- but when we -- when we get into, sort
14 of, the -- just the -- again, the cavalier way that
15 a lot of this was handled --
16 CHIEF JUSTICE TOAL: Well, we don't need to go there --
17 MR. BLACK: Okay.
18 CHIEF JUSTICE TOAL: -- because you've already said --
19 MR. BLACK: Well, I -- I think --
20 CHIEF JUSTICE TOAL: -- that initial commitment was
21 fine.
22 MR. BLACK: Well, I think one of the problems is -- is
23 June 14th --
24 CHIEF JUSTICE TOAL: Well, wait a second.
25 MR. BLACK: -- Dr. -- Dr. Leonhardt --

1 CHIEF JUSTICE TOAL: All right.
2 MR. BLACK: -- comes in and issues her report as another
3 set of eyes on --
4 CHIEF JUSTICE TOAL: Hang on.
5 MR. BLACK: -- the case.
6 CHIEF JUSTICE TOAL: Hang on. The 9th transferred to
7 Three Rivers, so that's the first time they have
8 the patient.
9 MR. BLACK: Right.
10 CHIEF JUSTICE TOAL: At that point, legitimate transfer,
11 correct?
12 MR. BLACK: If the order -- detention -- if Judge
13 Goodstein's correct and it's valid, yes.
14 CHIEF JUSTICE TOAL: All right. June the 13th, Lawson:
15 "Continue hospitalization. Hearing on the 21st."
16 Still okay?
17 MR. BLACK: Well, at -- at that point, you know,
18 Dr. Leonhardt on June 14th issues her report. So
19 it was her second eyes on the case and says --
20 CHIEF JUSTICE TOAL: All right. And on --
21 MR. BLACK: -- "Wait a minute. This -- this" --
22 CHIEF JUSTICE TOAL: And on June the 21st Judge Lawson
23 conducts a hearing, and he's got it all. He's got
24 Leonhardt; he's got Hooker; and he's got Bryant-
25 Mobley and Burrell. So where's the problem? You

1 just disagree with the decision Judge --
2 MR. BLACK: We just --
3 CHIEF JUSTICE TOAL: -- Lawson made?
4 MR. BLACK: Well, we -- we do, and certainly --
5 CHIEF JUSTICE TOAL: But you're suing Three Rivers now?
6 MR. BLACK: We are.
7 CHIEF JUSTICE TOAL: All right. And trying to hold them
8 liable for some outrageous, terrible conduct, and
9 all they are doing is following these orders. The
10 court system and everybody concerned has touched
11 this thing many times during the time of this
12 hospitalization. There is some disagreement about
13 how ill your client was at that time, as there
14 sometimes is in these very complex medical or
15 psychiatric matters. But where is the foundation
16 for any tort action?
17 MR. BLACK: Well --
18 CHIEF JUSTICE TOAL: I mean, just cut it to the chase.
19 I -- and I think there are big problems with res
20 judicata. But if you get over that and we're just
21 talking about when the badness took place, you're
22 saying it took place when Dr. Leonhardt issued a
23 report?
24 MR. BLACK: I think -- no. I think certainly at that
25 point what Three Rivers failed to do was properly

1 investigate the things that she was pointing out.
2 CHIEF JUSTICE TOAL: But --
3 MR. BLACK: She said, "Look, this" --
4 CHIEF JUSTICE TOAL: -- the Court investigated that
5 seven days later in a complete hearing that looked
6 at it all. Am I not right?
7 MR. BLACK: There -- there was a hearing that was held.
8 And -- and -- and -- and --
9 CHIEF JUSTICE TOAL: And it had all this information in
10 front of Judge Lawson, correct?
11 MR. BLACK: Correct, Your Honor.
12 CHIEF JUSTICE TOAL: Well, where is the outrageous
13 conduct by Three Rivers when the probate judge
14 court-appointed -- or the -- the judge appointed to
15 hear this thing went into every bit of what you say
16 Three Rivers should've considered and issued an
17 order?
18 MR. BLACK: Well, I -- you know, I -- again, I -- I hate
19 to keep going back harping on the detention order,
20 but you look at -- at sort of how this whole thing
21 could --
22 CHIEF JUSTICE TOAL: You can't harp on that detention
23 order.
24 MR. BLACK: Well, what I -- what I'm --
25 CHIEF JUSTICE TOAL: (Inaudible.)

1 MR. BLACK: Sort of the -- the --
2 CHIEF JUSTICE TOAL: You've got a client that's
3 dissatisfied with some fractional period of time of
4 the time she was committed --
5 MR. BLACK: But --
6 CHIEF JUSTICE TOAL: -- and wants to sue Three Rivers,
7 but what we've got to have is some foundation to
8 look and see what they've done wrong.
9 MR. BLACK: But I think, when you look at this, what
10 they've always -- what -- what's always happened in
11 this case is that they've overblown the idea about
12 how serious it is. They didn't just go into court
13 and say, "Let's do an involuntary commitment."
14 They said, "Let's do this on an emergency basis.
15 Let's do this" --
16 CHIEF JUSTICE TOAL: You don't have any --
17 MR. BLACK: -- "before we ever have any sort of
18 hearing."
19 CHIEF JUSTICE TOAL: -- ability to attack that anymore.
20 That's what was done in the first hearing, was it
21 not, sir?
22 MR. BLACK: That -- that was brought up with -- with the
23 appeal that Mr. Warner did with Judge Goodstein,
24 Your Honor.
25 CHIEF JUSTICE TOAL: Mr. Black, what I'm trying for is

1 something beyond the determination you agree was
2 properly made, even if you disagree with the --
3 MR. BLACK: I disagree but --
4 CHIEF JUSTICE TOAL: (Inaudible.)
5 MR. BLACK: -- we think we're stuck with it.
6 CHIEF JUSTICE TOAL: Right. You're stuck with that.
7 And sometime between that time when the
8 determination was made and the 21st when another
9 determination was made, where in that period of
10 time is the negligent conduct by Three Rivers?
11 MR. BLACK: I -- I think the egregious -- we've
12 essentially got the fox guarding the henhouse in a
13 lot of this. Most of the information is coming out
14 from Three Rivers, who's getting paid, who's --
15 who's trying to -- to milk this thing for as long
16 as they can as long as the -- the payment source is
17 there.
18 CHIEF JUSTICE TOAL: There's no evidence in the record
19 that they're trying to do that. That's your gloss,
20 but if -- if we are to take your position on that,
21 every time a mental health facility takes the
22 position that a -- that the patient still needs
23 treatment, they're going to be faced with one of
24 these lawsuits saying that they are just trying to
25 milk the -- the client for money. I -- I -- I want

1 to --
2 MR. BLACK: But --
3 CHIEF JUSTICE TOAL: -- see something more than that
4 before I can understand what their conduct -- what
5 false conduct has taken place here.
6 MR. BLACK: Well, I understand that, Your Honor, but I
7 mean, I think you do have to recognize that there
8 is sort of this inherent conflict about having the
9 provider --
10 CHIEF JUSTICE TOAL: That's (inaudible).
11 MR. BLACK: -- furnishing the information.
12 CHIEF JUSTICE TOAL: The law allows that. In fact, it
13 requires that the provider be involved in
14 testifying and giving its best opinion --
15 MR. BLACK: But --
16 CHIEF JUSTICE TOAL: -- as to what the status of the
17 patient is.
18 MR. BLACK: But the Court has recognized, in
19 guardianship and conservatorship cases, that
20 there's some merit to have disinterested medical
21 examiners rather than treating physicians on -- on
22 occasion.
23 CHIEF JUSTICE TOAL: Does the law require that?
24 MR. BLACK: The law does not require that.
25 CHIEF JUSTICE TOAL: Then how are we going to impose

1 that and set a court standard for that?
2 MR. BLACK: Again, I -- I think all of this sort of
3 wraps into that whole conspiracy idea. And if --
4 if we can -- are able to prove that cause of action
5 --
6 JUSTICE BEATTY: (Inaudible.)
7 MR. BLACK: -- on the conspiracy --
8 JUSTICE BEATTY: (Inaudible.)
9 MR. BLACK: -- we still have the conspiracy claim. But
10 if -- if -- if ultimately we're successful in that
11 conspiracy claim, isn't that outrageous? And if
12 they're -- if they've held her for purposes of
13 furthering that conspiracy, doesn't that become
14 false imprisonment at some point, regardless of --
15 of whatever else has gone on?
16 CHIEF JUSTICE TOAL: If this is false imprisonment in
17 the face of these numerous hearings before a judge
18 where a factual determination, be it ones with
19 which you disagree, are made, then we're walking
20 down a very dangerous road, are we not?
21 MR. BLACK: Well, I will concede that the false
22 imprisonment is not necessarily the strongest cause
23 of action we have in this case, Your Honor.
24 CHIEF JUSTICE TOAL: Thank you.
25 MR. BLACK: Thank you.

1 CHIEF JUSTICE TOAL: You'll have some time to reply.
2 MR. BOINEAU: May it please the Court, Madam Chief
3 Justice, Justices. I'm Trippett Boineau with
4 McAgnus Goudelock & Courie. We represent
5 Psychiatric Solutions in this case.
6 Justice Beatty, answering your question which
7 you asked earlier: In the record is there anything
8 which suggests that the treatment, after the
9 initial commitment order, rose to a level of a
10 false imprisonment or of an intentional infliction
11 of emotional distress? And, Justice Beatty, you
12 hit it on the head: There's nothing in there.
13 That argument was not made in the initial brief.
14 Further, Justice Beatty, and -- and -- and,
15 Madam Chief Justice Toal, answering your question:
16 The initial commitment -- that order was appealed
17 pursuant, actually, to a Rule 60 motion. There was
18 a Rule 60 motion filed after a -- a year after the
19 initial order. That order was -- an order was
20 issued by Judge Provence, which was then appealed
21 to Judge Goodstein, who issued her ruling, and that
22 order has not been appealed.
23 So we would argue that the law of the case
24 certainly is that the initial detention was not
25 issued improvidently but rather, based upon Judge

1 Goodstein's order, was providently issued and is
2 the law of the case as we sit here today.
3 JUSTICE KITTREDGE: Sir, can you do me a favor? Do you
4 have the record in front of you?
5 MR. BOINEAU: Yes, sir.
6 JUSTICE KITTREDGE: I need you to help me understand
7 something. If you'd look at page 16, I think this
8 is the report signed by Dr. Hooker.
9 MR. BOINEAU: Yes, sir, Your Honor.
10 JUSTICE KITTREDGE: I think it's (inaudible) if I
11 understand -- and I could be wrong, and you please
12 correct me -- that as a result of this order of
13 Dr. Hooker, the patient was taken to Aiken Regional, and
14 -- and then she was transferred to Three Rivers?
15 MR. BOINEAU: Aurora Pavilion. Yes, sir, Your Honor.
16 JUSTICE KITTREDGE: So this document on page 16, would
17 that be the operative document on which Three
18 Rivers and the predecessor for Three Rivers relied
19 in accepting the patient?
20 MR. BOINEAU: That is, Your Honor. That's Part 2.
21 There's -- there's a Part 1 pursuant to 44-17-430.
22 There's a Part 1 certificate, and this is the Part
23 2 certificate that is filled out by Dr. Hooker
24 dated June 8th, 2005, at --
25 JUSTICE KITTREDGE: Okay.

1 MR. BOINEAU: -- three o'clock p.m.
2 JUSTICE KITTREDGE: And this would be dealing with 44-
3 17-410?
4 MR. BOINEAU: That is correct, Your Honor.
5 JUSTICE KITTREDGE: Now, the copy I have has a -- a -- a
6 block to satisfy the 44-17-410 Sub 2 requirement.
7 The one I have in the record is not checked. Was
8 it checked and my copy's simply not legible?
9 MR. BOINEAU: Your Honor, the -- the record that we have
10 is -- and the only one I have in the record is this
11 one, which is not, but which if -- reading his
12 handwriting states that -- and, Your Honor, the
13 best that we could read it was that she was
14 committed pursuant to this Part 2 order.
15 JUSTICE KITTREDGE: Well, what the doctor does is simply
16 to regurgitate what the husband says. So there's
17 -- I don't find any independent assessment, but it
18 seems to me the form is mandated to comply with the
19 statute to prevent the very ill, which they say
20 happened in this case. And here we are at the
21 summary judgment stage; in the form mandated by
22 law, the -- the fundamental block is not even
23 checked. Where does that leave us?
24 MR. BOINEAU: And, Justice Kittredge, I think where that
25 leaves us is there is safeguards for that, and

1 exactly what Three Rivers did with the appointment
2 of two designated examiners and then a full hearing
3 on the merits by Judge Lawson where -- in which he
4 was able to review on June 21st, 2005, the Part 2
5 of the certificate, and after a full review and the
6 appointment of designated medical examiners who had
7 evaluated the appellant in this matter, they found
8 that the certificate was appropriate and that she
9 was in need -- need of further treatment to the --
10 actually 12 months is -- was his finding.
11 Your Honor, with that particular commitment
12 order, that certificate -- that is relied upon, and
13 I think Madam Chief Justice Toal hit on this: For
14 public policy reasons, it's hard for a hospital who
15 is basically prescribed by a court to treat a
16 patient to second-guess the court. And if you take
17 the appellant's position, I believe they're asking
18 this court to say that someone who has treated at a
19 psychiatric facility down the -- or the facility
20 itself is able to question the judgment of the
21 Court, and that's certainly not what we want in
22 these type cases.
23 Your Honor, getting past that in the law of
24 the case issue, I believe our court in Vaughan has
25 dealt with a very similar issue. The "Vaughan v.

1 McLeod" case in which our court found that there is
2 some -- excuse me -- there is some qualified
3 immunity for these type of facilities when they are
4 appointed to treat or diagnosis patients with
5 potential mental disorders. And the -- the Vaughan
6 case, which is analogous to this one, the
7 determination was a common law privilege and one
8 that, essentially, again for public policy reasons,
9 our court held that they did not want these --
10 everybody who -- who is committed pursuant to these
11 orders, obviously, is unhappy generally -- they're
12 involuntary -- to come back and be able to pursue
13 an action against the treating physician or the
14 physician who evaluated the patient initially.
15 Also, there's a case directly on point,
16 "Manley v. Manley," again which our court -- almost
17 the same set of facts. It was an involuntary
18 commitment, and in that case the court held that
19 the psychiatrist -- there was three causes of
20 action, the exact same three we have here today.
21 It was defamation, false imprisonment, and outrage.
22 The court upheld the summary judgment -- the grant
23 of summary judgment on all of those causes of
24 action finding again that there was a qualified
25 privilege.

1 Also, with respect to the defamation cause of
2 action in that case, our court found a qualified
3 privilege when a health care provider or a
4 physician, in diagnosing a patient, the
5 communication that is made is one that is made for
6 the purposes of diagnosis either to the courts or
7 to someone with an interest, and it -- the five-
8 part test is there's good faith and interest to be
9 upheld, the statement limited in scope and purpose,
10 and a proper occasion, as well as a publication in
11 a proper manner to the proper parties. Here, as
12 far as the defamation claim goes, there's no
13 evidence in the record of any publication made by
14 Three Rivers or Psychiatric Solutions to any party
15 outside those that were specifically involved in
16 the commitment of the appellant. So therefore,
17 Your Honor, we think that the -- the grant of
18 summary judgment by the circuit court was proper.
19 Further, with respect to the defamation cause
20 of action, 44-22-90 and 44-22-100 of the South
21 Carolina Code, both of those code sections
22 specifically relate to involuntary commitment
23 proceedings wherein -- where one is involuntary
24 committed. The patient-physician relationship --
25 the privilege that's normally there is waived

1 pursuant to those two code sections. Also, as the
2 Court's aware, anything that was filed in a
3 pleading or otherwise would be entitled to an
4 absolute immunity in this case.
5 Justices, lastly, with respect to the -- the
6 cause of action for intentional infliction of
7 emotional distress, the many cases that have
8 brought this issue to the Court, the court in that
9 case, specifically the circuit court, was to serve
10 as a gatekeeper to those claims. And it -- it's --
11 we've -- our courts have previously held that there
12 must be a question of fact as to each specific
13 cause -- each specific cause of action as -- as it
14 relates to intentional inflection of emotional
15 distress.
16 That being that, is there a question of fact
17 as to the reckless treatment? Did it rise to a
18 level that no one should be expected to endure it?
19 And in this case, if you look at the respondent's
20 -- I mean, the appellant's brief, there's simply no
21 evidence in there which suggests that there's
22 anything that rises to that type of conduct on
23 behalf of solutions. I think that, again, the --
24 the Court hit it on the head: The -- the law of
25 the --

1 JUSTICE BEATTY: You don't think being forcibly retained
2 in the psychiatric facility would not create any
3 emotional distress and would not rise to the level
4 that would be -- that would offend the average
5 person?
6 MR. BOINEAU: Justice Beatty, I think based upon Justice
7 Littlejohn's ruling in a previous case, there has
8 to be something more than a mere allegation. And I
9 -- I don't want to dodge your question. And I do
10 think that someone could think that being in a
11 hospital -- if -- if you were simply just made to
12 come in there for no reason and there was no
13 independent review of it, one --
14 CHIEF JUSTICE TOAL: Well, that --
15 JUSTICE BEATTY: (Inaudible.)
16 CHIEF JUSTICE TOAL: That -- that -- that's -- that's
17 the troubling part about this case this morning,
18 Mr. Boineau. In my understanding your argument,
19 you just kind of gloss over the record on appeal at
20 page 16 that Justice Kittredge asked you about on
21 the theory that, if later we can kind of justify
22 all this with some medical opinions that actually
23 do make the determination that she currently poses
24 a substantial risk to herself or others, then it's
25 all okay. But the very first document that -- and

1 the only document Three Rivers had upon which to
2 make an admission was a document where Dr. Hooker,
3 for whatever reason, did not check the crucial
4 determination "danger to self and others," which is
5 the sine qua non of involuntary commitment.
6 MR. BOINEAU: And -- and, Justice Toal, I -- that is the
7 document that they had, along with that being the
8 Part 2. The -- the Part 1 is filled out by -- or
9 in this case was filled out by the appellant's
10 husband. Then you have an order of the court -- an
11 order of detention based upon that Part 1. And
12 then --
13 CHIEF JUSTICE TOAL: Well, then is the Part 2
14 meaningless? I mean, could she have been admitted
15 with no medical opinion whatsoever?
16 MR. BLACK: Justice Toal, no she could not have.
17 Without the Part 2, she could not have been
18 admitted --
19 JUSTICE BEATTY: Continuously.
20 MR. BLACK: -- continuously admitted. She could have
21 been --
22 JUSTICE BEATTY: What about the -- the evaluation by
23 Aurora itself on the 9th, which is found on page
24 17, where they checked the block that says, "I
25 certify that an inpatient psychiatric hospital

1 admission was medically necessary for psychiatric
2 reasons"?
3 MR. BOINEAU: And -- and then ten -- they estimate a
4 ten-day hospitalization after that, Justice Beatty,
5 which is in the medical record. And again, I think
6 that's --
7 JUSTICE BEATTY: But -- but we -- we can get -- we can
8 get past that initial. I mean, he's conceded that.
9 If we seize upon his argument that he's not
10 concerned with that, what he's concerned with is
11 the improper continuation of the inpatient
12 treatment when she didn't need it and he -- he
13 focuses on the handwritten note, I do believe, by
14 one of the doctors that said, "Well, this seems to
15 be something that has a domestic basis as opposed
16 to any psychiatric reason, and it ought to be
17 looked into." Now, why doesn't he have a plan
18 there, or why didn't he look into it?
19 MR. BOINEAU: Again, there -- there's no evidence that
20 they didn't look into it. And --
21 JUSTICE BEATTY: There's no evidence that they did
22 either, is there?
23 MR. BOINEAU: There is no evidence except the continued
24 treatment of -- of the appellant in this case.
25 And, Justice Beatty, further: the fact that

1 continued independent examiners were appointed to
2 review her situation. And, in fact, she was
3 released July 20, 2005, well before the order of
4 detention would have expired, that being a year-
5 long order. And the medical record to which you
6 refer to, Justice Beatty, says that she's released
7 upon agreeing to take her medicine without the
8 necessity of having a doctor administer it,
9 agreeing to take it. Justice Beatty, I think that,
10 based upon -- and, again, I go back to the review
11 process. I think it's absolutely essential that
12 there is a review process, and there's nothing in
13 the record to support that anything in the review
14 process wasn't done providently, wasn't done
15 correctly
16 And because of that, I think we're stuck with
17 law, and the law is that the detainment was proper.
18 The initial -- she was initially sent to Aurora
19 Pavilion, which is not even Psychiatric Solutions
20 or Three Rivers. And once there, the doctor there
21 checked that they believed that the hospitalization
22 was necessary for at least ten days.
23 Transferred then to Three Rivers, and Three
24 Rivers immediately files an emergency notification
25 of appointment of medical examiners. And I think

1 when you -- when you get there, it's clear Three
2 Rivers -- this theory that Three Rivers is trying
3 to hold the appellant for purposes of making money
4 or furthering some -- some desire that -- that's
5 not shown in the record, simply there's no evidence
6 to support that basis.
7 In fact, Three Rivers sends their doctors who
8 were examining her to the hearing. They testify.
9 An -- a guardian's appointed for the appellant in
10 this case, and a full hearing is heard. And,
11 again, another -- on July 8th, 2005, a subsequent
12 motion for the appointment of a separate examiner
13 is made to the Court to do a independent
14 examination of what's already been done.
15 And I think based upon all these processes and
16 these steps that have taken, the Court would have
17 to make a strong jump to -- to find that a
18 psychiatric hospital such as Psychiatric Solutions
19 or Three Rivers, who takes on patients pursuant to
20 a court order, without something more, as our Court
21 said, has done anything to violate any of the laws
22 of the state.
23 And I -- I see that my -- I've got a little
24 more time. I'm happy to answer any questions. If
25 not, I'm -- I think that concludes --

1 CHIEF JUSTICE TOAL: Thank you --
2 MR. BOINEAU: -- my argument.
3 CHIEF JUSTICE TOAL: -- Mr. Boineau.
4 MR. BOINEAU: Thank you.
5 CHIEF JUSTICE TOAL: Mr. Black, any reply?
6 MR. BLACK: May it please the Court, just briefly. In
7 response to Justice -- and, again, not -- the res
8 judicata issue notwithstanding, in response to
9 Judge Kittredge's question about the form on page
10 16: No the box is not checked, and you're correct.
11 I mean, you look at -- at his -- his dissertation
12 here, and it's essentially regurgitating what the
13 husband has said. He never says in here she's a
14 danger to herself/she's going to hurt herself/she's
15 going to hurt somebody else.
16 Again, this was an emergency commitment. This
17 wasn't a case where they said, "Oh, let's go.
18 We'll do a hearing," and things like that. They
19 brought this on an emergency basis. They had the
20 police come pick her up, cart her down to -- to
21 Dr. Hooker, who then says, "Well, go over to the
22 emergency room. Let them rule out medical stuff.
23 And if they rule that out, go on home for the
24 night, and -- and I'll see you tomorrow and -- and
25 we'll look at that." I mean, does that sound like

1 an emergency kind of situation? I mean, just the
2 whole way this thing was handled.
3 And -- and even though you've got a 3 p.m.
4 date of 6/8/05, and again Dr. Hooker's affidavit
5 says, "I saw her on June 8th," but all the hospital
6 work was done on June 7th, and Hooker says, "I saw
7 her and then sent her over to the hospital." So he
8 had to have seen her the first time on the 7th, and
9 -- and his affidavit doesn't make any mention of a
10 second visit. You think if he had seen her a
11 second time, he would've been specific about that
12 in his affidavit. So apparently he signs this.
13 At some point, somebody puts a date of 3 p.m.
14 6/8/05. Doesn't look like his handwriting. The
15 whole 24-hour issue, she presented at the hospital
16 -- you look at their records, she showed up there
17 at 3 p.m. on the 7th, which means she had seen
18 Hooker before 3 p.m. So we're outside the 24-hour
19 period here. But I'm just -- again, I bring that
20 to your attention just showing kind of the -- the
21 -- the way this whole thing was handled.
22 With respect to the extension of -- of Vaughan
23 and the -- the quasi-judicial immunity issue, I
24 don't believe what -- what the respondents are
25 arguing is at all a fair extension of Vaughan.

1 Vaughan deals with a medical examiner in the
2 context of a guardian conservatorship procedure
3 where the -- the probate court has said to a
4 medical examiner, "I'm going to appoint you. You
5 go out and look at this person and come tell me
6 what's going on with them. And -- and we're going
7 to protect you from that so that you don't have to
8 pull any punches and you can be honest with the
9 court about your evaluation of this person." And
10 that makes perfect sense.
11 What they're wanting to do is extend that and
12 say, "That -- that immunity covers not only any
13 evaluation we do but any treatment we do. We're
14 covered no matter what we do with this person under
15 that theory." I just don't think that's an
16 appropriate extension of Vaughan. Thank you.
17 CHIEF JUSTICE TOAL: Thank you, Mr. Black. (Inaudible)
18 recess.
19 (End of recording.)
20 (*This transcript may contain quoted material.
21 Such material is reproduced as read or quoted
22 by the speaker.)
23 (**Certificate accompanies sealed original
24 only.)
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Martha Lewin Argoe,	)	C/A No. 07-CP-32-1981
Plaintiff,	)	
Versus	)	**REPLY TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE GRANT OF SUMMARY JUDGMENT IN FAVOR OF DAVID A. STEINER, MD.**
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor; Phyllis Bryan-Mobley, MD; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan,	)	
Defendants.	)	

The Honorable William P. Keesley heard Summary Judgment motions on August 29, 2013 and granted Summary Judgment in favor of Defendant David A. Steiner, MD (hereinafter "this Defendant" or "Dr. Steiner") by Order filed on March 21, 2014. Plaintiff's counsel filed a motion to reconsider on April 7, 2014.

Dr. Steiner respectfully submits that Plaintiff's Motion to Reconsider should be denied because it raises no new issues and Plaintiff has no actual basis from which to challenge the original grant of summary judgment in favor of Dr. Steiner.

STANDARD OF REVIEW

A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E. 2d 772, 780 (S.C. 2004). Here, the Plaintiff raises no new grounds that an issue was raised and not ruled on to preserve it for appellate review. Further, the

Plaintiff's motion merely rehashes previous arguments which this Court has carefully considered and ruled upon.

FACTUAL/PROCEDURAL HISTORY

The Plaintiff, Martha Lewin Argoe ("Plaintiff") was married to G. Lewis Argoe, Jr. ("Argoe, Jr.") for forty-two (42) years. They had one child, George Lewis Argoe, III ("Argoe, III"). Plaintiff and Argoe, Jr. allegedly had marital problems for a number of years to the extent that Plaintiff moved out of their bedroom several years before they separated. On or about April 20, 2005, Argoe, Jr. went to Orangeburg Mental Health Center and spoke with a counselor about involuntarily committing Plaintiff to a psychiatric facility. Plaintiff gave her son her Power of Attorney a year prior to this incident.

This lawsuit has taken various forms over the years. The South Carolina Supreme Court has ruled on two appeals filed by Ms. Argue concerning the same factual scenario as the lawsuit in its current posture. Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 465-68, 710 S.E. 2d 67, 69-70 (2011)(Argoe II). Pursuant to the June 21, 2005 Order from Probate Judge Lawson, Ms. Argoe completed her one-year of out-patient therapy around July/August 2006. Soon after completing her outpatient treatment, Ms. Argoe commenced litigation.

The facts that gave rise to this matter started on June 6, 2005. Argoe, Jr. secured a Commitment Order from The Probate Court to commit Plaintiff to a psychiatric facility. Plaintiff was picked up on June 8, 2005 by Orangeburg County law enforcement, and was evaluated by Dr. Glenn Hooker, with Argoe, Jr. present for the evaluation. Dr. Hooker then signed an Affidavit in support of Plaintiff's commitment. Plaintiff was subsequently taken to Aiken Regional Aurora Pavilion

("Aurora"), where she was seen by Dr. Steiner for an initial evaluation. Dr. Steiner made an initial assessment and estimated a ten day length of stay for the involuntary commitment. He noted in his records that he would speak with her son (whom she trusted) the following day. Ms. Argoe refused all medication while she was at Aurora and only spent one night there. This brief interaction is the only involvement Dr. Steiner had with Ms. Argoe.

Because her health insurance (Carolina Care Plan) would not cover her stay at Aurora, Plaintiff was transferred to Three Rivers Behavioral Health Center in Lexington on June 9, 2005. This transfer occurred only 26.5 hours after her arrival. While at Three Rivers, Plaintiff was seen by Doctors Mobley, Dodds, and Nurse Burrell. Plaintiff was discharged from Three Rivers on July 20, 2005. Plaintiff's total confinement, including her time with the Orangeburg Police, her brief stay at Aurora, and her stay at Three Rivers, was forty-three (43) days. She was ordered, as a condition of her discharge, to undergo out-patient treatment for one year, which she did.

Plaintiff originally brought this action alleging multiple causes of action against numerous Defendants including intentional infliction of emotional distress, negligence, false imprisonment, conspiracy, abuse of process, defamation, invasion of privacy, and public disclosure of a private fact. Through summary judgment and voluntary dismissals, all causes of action except a professional negligence claim have been previously disposed of. Plaintiff amended her Complaint following the Supreme Court's decision in Argoe v. Three Rivers Behavioral Health, LLC, et al., 392. S.C. 462, 710 S.E.2d 67 (2011) to make a claim for medical negligence against Dr. Steiner.

DISCUSSION

In a medical negligence action, the plaintiff must prove the physician departed from the recognized and generally accepted standards followed by competent practitioners in the physician's field under same or similar circumstances. Melton v. Medtronic, Inc., 389 S.C. 641, 655, 698 S.E. 2d 886, 893 (2010). The plaintiff must provide evidence that deviations from the standard practice and procedures were the proximate cause of the plaintiff's alleged injuries. Id. Dr. Davis' mere conclusory statements do not provide that Dr. Steiner departed from the recognized and generally accepted standards followed by competent physicians in the field

Plaintiff claims that Dr. Steiner breached the standard of care which proximately caused the Plaintiff's injury and damages. This is inaccurate and unsupported by the facts of this case. Plaintiff cites testimony of Dave Davis, M.D. stating he did not think Dr. Steiner did a proper assessment of Argoe to hold her against her will. (Dave Davis, MD, Dep. 24:9-14). Dr. Davis did not provide any evidence or reasons for his opinion. Further, Dr. Davis was unfamiliar with South Carolina commitment proceedings and procedures in South Carolina. (Davis Dep: 23-24). Dr. Davis opined that Dr. Steiner caused Ms. Argoe damages by putting her in a psychiatric hospital and having her transferred. However, Dr. Steiner was acting pursuant to a valid Probate Court Order of commitment.

Dr. Steiner was only involved in the initial assessment of the Plaintiff pursuant to a valid commitment order of the Probate Court. In addition, even if there was a basis for a medical negligence claim against Dr. Steiner, taking the evidence in the light most favorable to the Plaintiff, Plaintiff's expert admitted in his deposition that he could not find fault for a period of a couple of days for the initial observation

and investigation. Therefore, there is no expert testimony to support the Plaintiff's contention that Dr. Steiner breached the standard of care. Therefore, no genuine issue of material fact exists to show that Dr. Steiner deviated from standard practices and procedures or that his initial assessment proximately caused any injury to the Plaintiff. In addition, in all aspects of Dr. Steiner's treatment, he was well within the scope of the valid Probate Court Order upon which the Plaintiff was involuntarily committed.

In Argoe v. Three Rivers Behavioral Health, LLC, et al., the South Carolina Supreme Court found the Plaintiff's commitment order was valid and supported by a factual basis. 392. S.C. 462, 471, 710 S.E.2d 67, 72 (2011). The Court found the Plaintiff's challenge to the commitment proceeding was well beyond the statutorily mandated fifteen day time period and also barred by *res judicata*. Argoe at 470, 471, 710 S.E.2d at 71, 72. As a result of the Probate Court's valid Order, the Plaintiff was unable to maintain causes of action for false imprisonment, defamation, or intentional infliction of emotional distress against Three Rivers Behavioral Health, LLC. Argoe at 476, 710 S.E. 2d at 75.

Plaintiff's medical negligence claim against Dr. Steiner must fail because Dr. Steiner was merely following the court ordered process as directed by the Probate Court. Further, Dr. Steiner complied with the Probate Court Order at all times during his involvement with the Plaintiff. The Order required Dr. Steiner to participate in the commitment of the Plaintiff. The South Carolina Supreme Court has specifically upheld the commitment process in this case. Therefore, Dr. Steiner is entitled to Summary Judgment in this case since he simply saw the Plaintiff for

one assessment in the very first hours of her lawful commitment. Additionally, in her one night stay at Aurora, the Plaintiff refused all medication.

Dr. Steiner was legally obligated to perform the initial assessment of the Plaintiff pursuant to the Probate Court's Order. All of Dr. Steiner's actions were undertaken pursuant to the Order. He did not have the option to disregard the Order of the Probate Court. Dr. Steiner was serving as an arm of the judiciary and his actions were clearly performed within the scope of the Probate Court Order. Further, the commitment order was ruled lawful by the South Carolina Supreme Court. Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 710 S.E. 2d 67 (2011).

CONCLUSION

Summary Judgment was properly granted as to Dr. Steiner, and the Court should not reconsider the ruling because in all aspects of his treatment of the Plaintiff, he complied with the Order issued by the Probate Court. In addition, given that the initial commitment procedures and the subsequent commitment orders are valid, Plaintiff cannot establish that Dr. Steiner breached the standard of care and proximately caused her damages. As such, this Court should deny the Plaintiff's Motion to Reconsider the grant of Summary Judgment to Dr. Steiner.

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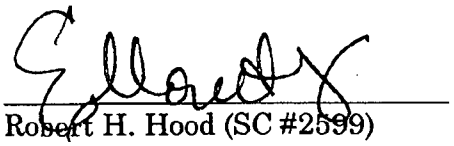

Robert H. Hood (SC #2599)
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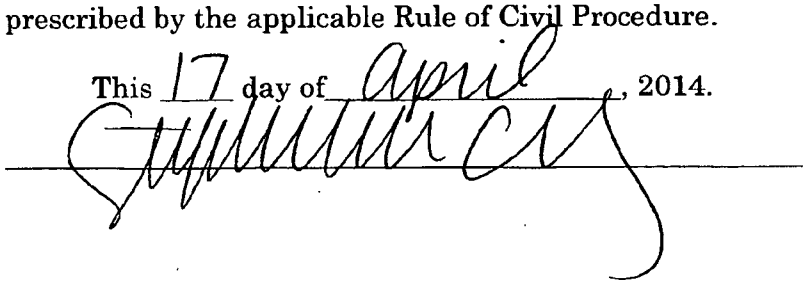
Attorneys for the Defendant
David A. Steiner, MD

4/17, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 17 day of April, 2014.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	11th JUDICIAL CIRCUIT
Martha Lewin Argoe, Plaintiff, vs. Three Rivers Behavioral Center and Psychiatric Solutions, Its Successor; Phyllis Brant-Mobley, MD; Aiken Regional Medical Center; Aurora Pavilion; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN; and Carolina Care Plan Defendants.	)	CIVIL ACTION NUMBER: 07-CP-32-1981 **REPLY TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE GRANT OF SUMMARY JUDGMENT IN FAVOR OF DEFENDANT DORIS ANN BURRELL, RN**

The Honorable William P. Keesley heard summary judgment motions on August 29, 2013. On March 19, 2014, Judge Keesley e-mailed the parties his final, edited language for his order titled: "Order Granting Summary Judgment in Favor of Defendant Doris Ann Burrell." This order was subsequently filed with the Lexington County Clerk of Court on March 21, 2014. The order dismissed the claims against Nurse Burrell, finding she is protected from liability by quasi-judicial immunity. At a status conference with Judge Keesley on March 27, 2014, Plaintiff's counsel orally stated that he did not intend to file a motion to reconsider this order. However, in a subsequent e-mail sent April 2, 2014, he recanted and, on April 7, 2014, filed a motion to reconsider.

Nurse Burrell respectfully submits that Plaintiff's motion to reconsider should be denied because it raises no new issues and Plaintiff has no actual basis from which to challenge the original grant of summary judgment in favor of Nurse Burrell.

BACKGROUND FACTS

This matter started when Ms. Argoe's husband filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005. Ms. Argoe was subsequently admitted for involuntary emergency hospitalization at a facility in Aiken. She was transferred and admitted to Three Rivers Behavioral Health, LLC ("Three Rivers") on June 9, 2005. The South Carolina Supreme Court has already dealt with this case twice on appeal. "Based on [Ms. Argoe's] initial psychiatric evaluation, which was conducted by Dr. Phyllis Bryant–Mobley, a provisional diagnosis was made that [Ms. Argoe] was suffering from bipolar disorder with manic and psychotic features." Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 467, 710 S.E2d 67, 70 (2011) (Argoe II). Four days later, on June 13, 2005, Darlington County Probate Court Judge Marvin Lawson[1] issued an Order for Continued Hospitalization, scheduled a hearing for June 21, 2005, and appointed Dr. Bryant-Mobley and Nurse Burrell, a registered nurse, as the court appointed examiners. Id.

The only involvement Nurse Burrell had with Ms. Argoe's treatment was through her duties as the second court appointed designated examiner. Nurse Burrell explained in her deposition that prior to filling out the Report of Designated Examiner for Mental Illness, "I have read [Ms. Argoe's] assessment that was done on her admission; I read her comment that was sent with her that day; I read the nurses' notes that were from each day forth; and I read the internal doctor['s notes] what had done something on this case; and then I talked with the patient herself." (Deposition of Nurse Burrell taken August 7, 2012, p.26, ll.2-8) That is, Nurse Burrell reviewed Ms. Argoe's medical files before she met with Ms. Argoe.[2] Nurse Burrell met with

[1] The matter was transferred from Orangeburg County to Darlington County.

[2] Nurse Burrell summarized some of the tasks she completed as the second appointed designated examiner.

Q: Let me show you what we've marked as Exhibit Two. Are these the notes that you prepared a few weeks ago?

A: No, this weekend.
Q: Oh, this weekend. I'm sorry. Okay. So it says, if I'm reading correctly, "prior to doing DE done on 06/15/05, read chart MDs --"
A: MD's, sorry.
Q: "Read info in" -- what is that word computer?
A: In the computer.
Q: Okay.
A: The nurses' notes aspect.
Q: Okay. And then the next little dash is, "Talked to staff per RN"
A: The RN's on the unit, that's what I was saying. It's not anyone in particular.
Q: Well, do you have any recollection of your discussions with the RNs?
A: Not at this time, I do not.
Q: This says, "Commit, patient was paranoid especially toward husband." Did I read that correctly?
A: "Was paranoid especially towards husband," right. That's from the commit paper. That's where those are gathered.
Q: So all of these four or five bullets here --
A: Yeah.
Q: -- were from the commit papers?
A: Uh-huh.
Q: That's just your summation of what was in the commit papers?
A: Yes. Well, see, it goes to commit paper there, then it goes to the notes back here.
Q: Right. Then it goes to the note on 06/13?
A: Yes. Uh-huh.
Q: And you're just -- this part of your notes that says, "On 06/13 patient was refusing meds, very manic, poor insight as to her illness, paranoid." What's that next word?
A: "Paranoid sometimes, spending large amounts of money."
Q: No, I'm down here under the 6/13 one. It says, paranoid.
A: "Very manic, poor insight as to her illness, paranoid but pleasant and intelligent."
Q: Okay. And that was just your summation of a note on 6/13?
A: That was what that note said on that day.
Q: Okay. And then below that it says, "6/11, MD and son met with Dr. Mobley."
A: Uh-huh.
Q: And then can you read the rest of that on that page for me?
A: "They say and confirm patient is delusional and paranoid for sometime. Spending large amounts of money, not sleeping, son and husband/father confirm that accusations of husband being abusive are delusions. Husband and son agreed to force meds on patient."
Q: Is that you just summarizing what you read in the medical records?
A: No, it's on there.
Q: I mean, that's a direct quote?
A: I didn't pick -- I didn't pick out just words. I mean, I picked out some things, but that's not my paraphrase or anything. Those notes are in there.
Q: Those are actual quotes from the medical records?
A: Yes.
Q: All right. Let's flip to page two of Exhibit Two. "6/12, patient was highly manic, delusional, brisk speech." That's what you -- just popping out of records?
A: That's in the note. That's a note. Uh-huh.
Q: And then 06/21, "In court, came to court hearing. Brother, who is a physician, sister, son, husband."
A: Uh-huh. "All confer patient has been manic, paranoid, delusion."
Q: Okay. What about where in this note that says, "During her time here delusional, paranoid all the time"?
A: That's in there. That's in there. That's from the --
Q: You're just copying the medical records?
A: Uh-huh.

Ms. Argoe for approximately fifteen minutes. She explained in her deposition that the purpose of the designated examiner is not to conduct counseling or to provide treatment. "It's just aspect [sic] of how she's doing, how she's responding to treatment, what's going on with her then, and whether or not compliant with treatment, I mean, if she needs to be held for court or she's getting along well, meds are working, and she can be discharged." (Deposition of Nurse Burrell, p.47, ll.10-18.)

Q: Okay. Other than what we've marked as Exhibit Two, have you prepared any other notes or emails or --
A: No.
Q: -- anything on a computer?
A: This is it.
Q: This is it. Okay. Have you answered all of my questions truthfully, honestly, and to the best of your ability?
A: Yes.
Q: Have you given full and complete answers to my questions?
A: Yes.

Deposition of Nurse Burrell, p.62, ln.2—p.66, ln.1.

And Nurse Burrell summarized the information that she reviewed for the designated examiner's report:

Q: So your recommendation of involuntary hospitalization was based not on your interaction with Ms. Argoe, but was based on other peoples' interaction with Ms. Argoe?
A: Yes.
Q: You relied on other peoples' interaction with Ms. Argoe to recommend that she be involuntarily hospitalized?
A: Yes, when other people are more qualified to make those accusations and get her in there, yes, and some of that being her immediate family.
Q: Her husband? Her son? You relied on what her husband and her son told you?
A: No, that was also coming from the commit who previously had been examined by doctors at another hospital and came to us from that. And she had been examined at other hospitals that got her involuntary there.
Q: Did you rely in any way -- in your recommendation that she be involuntarily hospitalized, did you rely in any way on what her immediate family purportedly said?
A: That took into account, yes.
Q: So you did rely on what her son and her husband said?
A: Not only that.
Q: Not only that, but in part you relied on --
A: Yes.
Q: -- what her son and her husband said?
A: Yes.

Deposition of Nurse Burrell, p.52, ln.3—p.54, ln.9.

Nurse Burrell acknowledges that since she is a registered nurse and not a doctor, she is not able to and does not attempt to make a clinical diagnosis of a patient.[3] Nurse Burrell acknowledges that during the brief time that she met with Ms. Argoe, Ms. Argoe did not exhibit the characteristics and traits that prompted the original involuntary commitment proceedings. But meeting with a patient is only one component of the overall designated examiner assessment process that Nurse Burrell undertook and relied upon for her report to the Probate Court.

Nurse Burrell issued her report to the Probate Court on June 15, 2005. Again, the basis of this report was Nurse Burrell's examination of the clinical records, interviews with the treating nurses, and meeting with Ms. Argoe. One of the factors is whether the patient is compliant with the treatment plan prescribed by the treating physicians. Ms. Argo was not in compliance with the prescribed treatment plan when Nurse Burrell drafted her designated

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[3] Plaintiff picks twenty-seven lines out of the sixty-seven pages of Nurse Burrell's deposition for her argument to reconsider. These are taken out of context. Taken it its entirety, it is clear that Nurse Burrell is acknowledging that once a doctor makes a clinical diagnosis, a nurse should abide by the doctor's findings and treatment regimen. The following excerpt follows a line of hypothetical questions directed at Nurse Burrell by Plaintiff's counsel where he asked her how she would react if he accused her of suffering from a mental illness.

A: But I would not -- I am not a doctor, and I couldn't say if you or anybody else has a mental illness. *I'm only a nurse can follow doctor's orders.*

Q: So you're telling me here today that you don't make diagnosis of whether somebody's mentally ill or not?

A: No, I do not.

Deposition of Nurse Burrell, p.37, ll.16-23 (portion used by Plaintiff's Counsel in his Motion to Reconsider in italics).

Plaintiff's argument is curious as her own named experts agree that the nurse's role does not include making clinical diagnoses of patients:

Q: As a nurse, do you make diagnoses –

A: No.

Q: --- of anybody?

A: No.

Q: Okay. Do you ever attempt to make a diagnosis of anybody, as a nurse?

A: That's the physician's responsibility.

Deposition of Linda L. DeBruce, dated May 24, 2013, p.15, ll.4-13

Q: In your practice and experience, how many times has a nurse been able to discharge a patient on her own?

A: None.

Q: Okay. And so who does the discharge?

A: The doctor.

Deposition of Dave Davis, MD, dated May 30, 2013, p.90, ll.1-6

examiner's report.[4] On the following day, on June 16, 2005, Dr. Bryant-Mobley issued her separate Report of Designated Examiner for Mental Illness that independently concluded that Ms. Argoe would benefit for continued inpatient treatment.

Nurse Burrell was not involved in any actual treatment of Ms. Argoe. Her next and final interaction with Ms. Argoe was at the Probate Court hearing on June 21, 2005. The findings from the designated examiners were presented to Probate Judge Lawson at that time. "[Ms. Argoe] and her attorney were in attendance and participated in the hearing." Argoe II, at 467, 710 S.E.2d at 70. Also present at this final Probate Court hearing were Ms. Argoe's husband, son, brother, and sister.[5] "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." Argoe II, at 467, 710 S.E.2d at 70.

At the conclusion of the Probate Court hearing on June 21, 2005, Nurse Burrell's duties as the second designated examiner were concluded. Nurse Burrell had no further contact with Ms. Argoe. In all, in her capacity as the second designated examiner, Nurse Burrell spent

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[4] The last questions asked of Nurse Burrell were:

Q: All right. I've got two very short questions for you. First, Exhibit Number One, when you performed the designated exam, was Ms. Argoe compliant with the treatment plan at Three Rivers?

A: No.

Q: Was Ms. Argoe the first patient to come into Three Rivers involuntarily that said that she did not have a problem?

A: No.

Deposition of Nurse Burrell, p.67, ll.3-12.

[5] Nurse Burrell testified that Ms. Argoe's family was also in attendance at the final Probate Court hearing.

Q: At the hearing on June 21st, 2005, did you testify at all at that hearing?

A: I don't think I did, but if I did, this is what usually happens, a doctor testifies, and the judge used to say, do you concur, and I'd say yeah. But I can't say if that was even said then or not.

Q: Do you recall how many family members were there at that hearing?

A: I made my note. The brother, sister, son and husband.

Q: Your notes that you're looking at right now, are those part of the medical records, because I don't recall seeing those?

A: This comes just from -- if you've got the chart, it tells you on there.

Deposition of Nurse Burrell, p.65, ln.22—p.66, ln.11.

approximately two hours reviewing records, interviewing the treatment team, and meeting with Ms. Argoe.[6]

The extended factual recitation above shows Nurse Burrell's participation in the involuntary commitment proceedings in her capacity as the second designated examiner that was appointed by the Probate Court. The South Carolina Supreme Court has already ruled that "[Ms. Argoe] is procedurally barred from challenging the validity of the underlying [involuntary commitment] orders," including and expressly noting the final continued commitment order that was entered on June 21, 2005. Argoe II, at 470, 710 S.E2d at 71.

DISCUSSION

Plaintiff's claim that Nurse Burrell "did not even attempt to perform the duties assigned to her by the Probate Court" is inaccurate and unsupported by the facts in this case. Judge Keesley was provided a copy of the deposition transcript of Nurse Burrell at the original summary judgment hearing. The extended factual recitation above references the deposition testimony of Nurse Burrell and the time she dedicated as the second designated examiner reviewing Plaintiff's clinical file, meeting with the treating nurses, and meeting with Ms. Argoe

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[6] Nurse Burrell summarized the time spent in preparation of drafting her designated examiner's report:

Q: Okay. So here's my question. I want to know how much time you spent doing whatever to complete Exhibit Number One[, the Designated Examiner's report]?
A: Are you asking for the day or for the whole length of time from the time I first got my DE?
Q: Both.
A: Probably in around about of two hours then --
Q: Okay.
A: -- if you talk about what's gone on before in that aspect, because you can't spend all that two hours at one time. You have to do some up front.
Q: Did some up front?
A: Uh-huh.
Q: And then you spent, I guess, approximately what you told me earlier 40 minutes --
A: About 30 -- uh-huh.
Q: Well, is it 30 to 40 minutes?
A: That's about when you go back on the unit to actually stay back there.
Q: Okay. And of that 30 to 40 minutes, ten to 15 was actually devoted to talking to Ms. Argoe herself?
A: Right.

Deposition of Nurse Burrell, p.29, ln.9—p.30, ln.7.

herself. After Nurse Burrell performed these duties, she drafted her official report to the Probate Court. In fact, Nurse Burrell issued her report to the Probate Court one day *before* the physician designated examiner, Dr. Bryant-Mobley, issued her report. Simply because the two designated examiners reached the same conclusion does not mean that either of them failed to perform their respective duties.

There should be no further discussion required regarding this issue as the Supreme Court has already determined in Argoe II that Plaintiff cannot now challenge the sufficiency of the underlying involuntary commitment proceedings. Clearly all of the activities that took place while the Probate Court was still conducting hearings was part of the Probate Court's involuntary commitment proceedings. The last Probate Court hearing was on June 21, 2005, when Probate Judge Lawson received the designated examiners' reports and conducted a hearing with both designated examiners, Plaintiff, and Plaintiff's family present. Notably, Plaintiff was represented by an attorney at the June 21st hearing and, at that time, she had the opportunity to challenge the sufficiency of any of the evidence that was presented to the Probate Judge. Again, as the Supreme Court explained in Argoe II, Plaintiff cannot challenge the proceedings now when she had every opportunity to challenge them before.[7]

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[7] The Supreme Court has already determined that there was a substantial basis for the continued involuntary, in-patient treatment of Plaintiff when the Probate Court hearing was held on June 21, 2005.

> Additionally, we disagree with [Ms. Argoe's] assertion that her involuntary commitment was without a factual basis. In support of this assertion [Ms. Argoe] directs this Court's attention to numerous documents, including Dr. Leonhardt's consulting opinion dated June 14, 2005, which was requested by Dr. Bryant–Mobley and reviewed by Dr. Dodds. It was indicated in the opinion that [Ms. Argoe's] condition was the result of "marital conflict" as she was an "alleged victim of abuse." Initially, we would note that Judge Lawson presumably took into consideration Dr. Leonhardt's opinion as the court-appointed examiners presented their findings to Judge Lawson during the June 21, 2005 hearing. Furthermore, the remaining documents offered by [Ms. Argoe] are depositions and affidavits that post-date the involuntary commitment proceedings. These after-the-fact documents cannot operate to retroactively invalidate the commitment orders that were procedurally proper and factually substantiated by court-appointed medical personnel. To find otherwise, we would undermine the probate court's authority in involuntary commitment proceedings.

Argoe II at 471, 710 S.E.2d at 72-73.

Moreover, Plaintiff has provided absolutely no basis for her argument that Nurse Burrell failed to perform her duties as a designated examiner. Plaintiff has offered no testimony of the duties of a designated examiner in South Carolina. This case is a medical malpractice case. It requires expert opinion to establish the standard of care, the deviation from the standard, and (at least to some extent) the damages that proximately flow from that deviation. See Linog v. Yampolsky, 376 S.C. 182, 656 S.E.2d 355 (2008). Plaintiff's own experts admit that they are not qualified to offer testimony regarding the designated examiners. Both Dr. Davis, a psychiatrist practicing in Atlanta, Georgia, and Lynda L. DeBruce, a nurse practicing in Texarkana, Arkansas, were referenced during the original summary judgment arguments. Both admit in their depositions that they have no knowledge of the designated examiner requirements in South Carolina.

Q. Have you ever been to South Carolina?
A. I think I did one time, to see my son.

Deposition of Lynda L. DeBruce, taken May 24, 2013, p.11, ll.16-17

Q. You've never practiced in South Carolina, right?
A. Correct.

Deposition of Lynda L. DeBruce, taken May 24, 2013, p.25, ll.5-7

Q. Have you ever served as a designated examiner?
A. No. I have not.
Q. Do you know what that is?
A. Yes.
Q. Okay. How do you know what a designated examiner is?
A. Well, in looking at the documents, where it says the "REPORT OF THE DESIGNATED EXAMINER," it basically outlines what's needed and what's involved.
Q. All right. So have you done any other research other than reading through the report of the designated examiner, in this case?
A. No.

Deposition of Lynda L. DeBruce, taken May 24, 2013, p.17, ll.4-18

Q. And, again, to clarify: other than reading through this report, have you read anything dealing with designated examiners in South Carolina?
A. No.

Deposition of Lynda L. DeBruce, taken May 24, 2013, p.19, ll.3-8

Q. Are you familiar with the process in South Carolina?
A. Somewhat, yeah.
Q. How are you familiar with the process in South Carolina?
A. Just from hearing about it in different places.
Q. I mean, like you hear about it overhearing some people talking in the corner or is that your –
A. No. We used to have this society called the Southern Psychiatric Association and the psychiatrists of what I call the southeast as far as Texas, we would meet a couple of times a year and things like this would be discussed.
Q. Are you still a member of that?
A. No. I'm not.
Q. When was the last time you ever went to one of those –
A. 15 years ago.
Q. Have you heard or spoken to anybody about the more modern procedures for involuntary commitments in South Carolina?
A. No.
Q. And you haven't read the case that was handed down form the South Carolina Supreme Court dealing with the commitment?
A. No.

Deposition of Dave Davis, MD, taken May 30, 2013, p.81, ln.8—p.82, ln.9

Q. You don't know what the requirements for the designated examiner are, correct, in South Carolina?
A. No.

Deposition of Dave Davis, MD, taken May 30, 2013, p.105, ll.19-22

Any "opinions" that Ms. DeBruce or Dr. Davis would offer regarding the involuntary commitment proceedings and the activities of the designated examiner would be inadmissible as lay opinions. See Rule 701, SCRE. And, again, any testimony that Plaintiff would offer regarding the designated examiners is specifically precluded in the first place by the Supreme Court's decision in Argoe II.

Plaintiff has no basis to overturn precedence or the well-reasoned original decision by Judge Keesley granting summary judgment in favor of Nurse Burrell. "Court-appointed examiners are essentially an arm of the judiciary," and "quasi-judicial immunity for acts performed within the scope of appointment is necessary to protect the court-appointed examiners from lawsuits by allegedly incapacitated persons who are upset by the results of the guardianship proceedings." Vaughn v. McLeod Regional Medical Center, 372 S.C. 505, 512, 642 S.E.2d 744, 748 (2007). The Vaughn case explains why, in situations similar to the one at hand, court appointed designated examiners are entitled to quasi-judicial immunity for their participation in the involuntary commitment process.

CONCLUSION

Plaintiff cites no law and raises no new issues in her motion to reconsider the grant of summary judgment in favor of Nurse Burrell. Plaintiff's claim that Nurse Burrell performed no function as a designated examiner is not supported by the record. Moreover, Plaintiff has offered no standard of care within which to measure the activities that were in fact performed by Nurse Burrell as the second designated examiner. Regardless, the Supreme Court has already ruled in Argoe II that Plaintiff has already waived this continued challenge of the involuntary commitment proceedings, which includes the review and report by the designated examiners. Under the Supreme Court's holding in Vaughn, quasi-judicial immunity applies to Nurse Burrell in this situation. Plaintiff's motion for reconsideration should be denied.

Respectfully submitted,

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Columbia, South Carolina
April 10, 2014

CERTIFICATE OF SERVICE

The undersigned employee of Collins & Lacy, P.C., Attorneys at Law, 1330 Lady Street, Sixth Floor, Post Office Box 12487, Columbia, South Carolina, 29211, does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by e-mailing and/or by mailing a copy of same to said person(s) via the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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PLEADINGS:

REPLY TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE GRANT OF SUMMARY JUDGMENT IN FAVOR OF DEFENDANT DORIS ANN BURRELL, RN

Richelle Campbell
Columbia, South Carolina

April 10, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Martha Lewin Argoe, Plaintiff, vs. Three Rivers Behavioral Health, LLC, Phyllis Bryant-Mobley, M.D., and Cheryl C. Dodds, M.D., Defendants.	)	Civil Action Number: 07-CP-32-1981 RESPONSE TO JUDGE KEESLEY'S EMAIL DATED OCTOBER 4, 2013 BY DEFENDANTS

In response to your email dated October 4, 2013, we have looked at the question you raised about the issues surrounding diagnoses and treatment and would like to note that the Second Amended Complaint dated January 6, 2013, raises two basic claims under the cause of action entitled: Medical Negligence.

The first claim deals with the defendants' failing to properly evaluate Ms. Argoe, thus resulting in her commitment pursuant to the Probate Order dated June 21, 2005. The second claim revolves around the treatment of Ms. Argoe. This treatment appears to solely focus on the forced medication issue. See, Second Amended Complaint, Paragraph 60.

The first claim solely centers around the probate action. Whether the diagnosis was bi-polar or some other diagnosis, Ms. Argoe was found to be mentally ill and a danger to herself and others. This finding resulted in the Honorable Marvin I. Lawson

issuing an Order dated June 21, 2005 finding her mentally ill and a danger to herself and others.[1]

Our Supreme Court in Argoe v. Psychiatric Solutions, Inc., 392 S.S. 462, 710 S.E.2d 67 (S.C. 2011) (Argoe II), sets out the findings of fact in this case that cannot be challenged. The Supreme Court found that

> On June 21, 2005, Judge Lawson conducted a hearing at which the court-appointed examiners presented their findings regarding Ms. Argoe's mental health. Ms. Argoe and her attorney were in attendance and participated in the hearing. On the 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 20, 2005, Ms. Argoe was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her prescribed medication. Dr. Dodds' discharge diagnosis was "bipolar disease, manic with psychosis."

The Supreme Court also stated that "we find that Ms. Argoe is procedurally barred from challenging the validity of the underlying orders." . . . "Accordingly, we find Ms. Argoe was precluded from collaterally attacking the underlying commitment orders." Id. at 471, 710 S.E.2d at 72.

Most importantly, the Supreme Court held that "we disagree with Ms. Argoe's assertion that her involuntary commitment was without factual basis." . . . "These after-the-fact documents cannot operate to retroactively invalidate the commitment orders that were procedurally proper and factually substantiated by court-appointed medical

[1] It is interesting to note that the diagnosis of Ms. Argoe's mental disorder did not substantially change prior to or after the determination by the Probate Court that Ms. Argoe was mentally ill and in need of involuntary commitment. On June 9, 2005, Dr. Steiner diagnosed Ms. Argoe with psychosis, not otherwise specified, rule out bi-polar mania with psychotic features and rule out delusional disorder. Upon her admission to Three Rivers, Dr. Mobley's provisional diagnosis was "Bi-Polar 1, Manic with Psychotic Features, rule out OCD". Dr. Desia also diagnosed her with behavior which was consistent with bi-polar disorder. Upon her discharge, Dr. Dodds found that the she "Bi-Polar 1, Manic with Psychosis". After her discharge and during her continued treatment at Coastal Empire her admitting diagnosis was Bi-Polar mania with psychotic features. This did not change even when she was discharged from the program on August 7, 2006.

personnel. To find otherwise, we would undermine the probate court's authority in involuntary commitment proceedings." Id. at 472, 710 S.E.2d at 73. That is, the South Carolina Supreme Court has already determined that, based on the specific facts of this same case, Ms. Argoe cannot attack the judicially determined lawful commitment with depositions, affidavits, or other documents that post-date the involuntary commitment proceeds.

The only claim currently pending is for alleged medical malpractice negligence. Notably, the Supreme Court already ruled that Ms. Argoe cannot maintain a claim of false imprisonment since she "was lawfully taken into custody and detained pursuant to valid probate court orders." Id. at 473, 710 S.E.2d at 73. Nor can Ms. Argoe maintain an action for intentional infliction of emotional distress. While upholding a prior grant of summary judgment in favor of Three Rivers regarding the prior asserted claim for intentional infliction of emotional distress, the Supreme Court explicitly concurred with the conclusion where Judge McMahon's held that "Three Rivers was entitled to quasi-judicial immunity as it was treating Ms. Argoe pursuant to the involuntary commitment order." Id. at 475, 710 S.E.2d at 74. All of this is summarized in the Supreme Court's conclusion that "[b]ased on these valid orders, we find that Three Rivers' conduct toward Ms. Argoe was lawful, justified, and reasonable." Id. at 476, 710 S.E.2d at 74.

In Vaughn v. McLeod Regional Medical Center, the Supreme Court gave Dr. Wilson absolute quasi-judicial immunity. In discussing common-law immunity, the Court stated:

> Because one of the guardian's roles is to act as a representative of the court, and because this role can only be fulfilled if the guardian is not exposed to a constant threat of lawsuits from disgruntled parties, a finding of quasi-judicial immunity is necessary. Such a grant of immunity is crucial in order for guardians to properly discharge their duties. The immunity to which guardians ad litem are entitled is an absolute quasi-judicial immunity.

Vaughn, 372 S.C. 505, 511-12, 642 S.E.2d 744, 748 (2007) (citation omitted). The Vaughn case agrees with the U. S. Supreme Court that "[c]ourt appointed examiners are essentially an arm of the judiciary." Id. at 512, 642 S.E.2d at 748 (citing Briscoe v. LaHue, 460 U.S. 325, 335, 103. S.Ct. 1108, 1115-16 (1983) "The common law provided absolute immunity from subsequent damages liability for all persons - governmental or otherwise – who were integral parts of the judicial process.") The Vaughn court pointed out the clear public policy quandary that "If court-appointed examiners in guardianship proceedings are not afforded immunity, the exposure to liability will have a chilling effect on future acceptances of such appointments." Vaughn at 512, 642 S.E.2d at 748. Therefore, South Carolina follows that rule that "a physician, who is a court-appointed examiner in a guardianship proceeding, has absolute quasi-judicial immunity for actions and opinions within the scope of the appointment." Id.

Ms. Argoe is attempting to collaterally attack the underlying Probate Commitment Orders finding of mental illness by alleging malpractice on the part of Three Rivers, Dr. Mobley and Dr. Dodds in alleging that these Defendants failed to properly, completely, and thoroughly evaluate Ms. Argoe to determine whether her conditions warranted involuntary in-patient hospitalization. See Paragraph 60 – Second Amended Complaint. Therefore, the claims that the actions of the Defendants did not warrant in-patient treatment should be dismissed as the finding of mental illness were ultimately ratified by the Probate Court Order dated June 21, 2005, and later affirmed by the South Carolina Supreme Court.

The basis for Ms. Argoe's lawsuit is that she is not "mentally ill" and therefore, all of her treatment in Three Rivers was unjustified and fell below the standard of care. This is what the Supreme Court said happened to Dr. Wilson in Vaughn, where

"Appellant alleged Dr. Wilson failed to properly diagnose Decedent's true condition and made an erroneous diagnosis of Decedent's condition. These allegations are based on Appellant's unhappiness with the doctor's finding of permanent incapacity. This type of allegation is precisely why absolute quasi-judicial immunity must be extended to court-appointed examiners in guardianship proceedings."

The Supreme Court in Argoe, found that the involuntary commitment had a factual basis and that after-the-fact documents, such as hired expert opinions for Ms. Argoe, cannot operate to retroactively invalidate the commitment orders and the finding of mental illness. Furthermore, because the Court found that based on the involuntary commitment orders, Three Rivers was entitled to quasi-judicial immunity, Dr. Mobley and Dr. Dodds are also entitled to the immunity, because they are the ones providing the care and treatment to Ms. Argoe at Three Rivers under the same Commitment Order and thus arms of the Court and "integral part of the judicial process." See, generally Briscoe v. LaHue, 460 U.S. 325, 335, 103 S.Ct. 1108, 1115-16, 75 L.E.d.2d 96, 108 (1983).

The second issue raised in your email dealt with treatment and specifically the issue surrounding forced medication. In paragraph 60 I and J of the Second Amended Complaint, Ms. Argoe specifically refers to allegations concerning the forced medication issue.

Ms. Argoe's expert psychiatrist, Dr. Davis, has not rendered any opinions that the care and treatment of Ms. Argoe's mental illness, if it existed, was below the standard of care. In fact, Dr. Davis stated (1) that there is no evidence the anti-psychotic medications Ms. Argoe took in Three Rivers caused any side effects (Dr. Davis deposition, Pages 140 lines 23 through 25), (2) that Ms. Argoe does not have any

residual problems from being involuntarily committed for 41 days other than "she was mad as hell," has to go through this lawsuit with expenses and has a "lot of stress from this long, drawn-out litigation," and (3) that she was "deprived of her liberty" (Dr. Davis deposition, Page 162, Line 3 through Page 163, Line 16).

As a result of Ms. Argoe refusing to take medication prescribed to her by Dr. Mobley on June 13, 2005, Dr. Mobley requested a second opinion as to the appropriateness of forced medication administration in Ms. Argoe's situation. Ms. Argoe was evaluated on June 14, 2005 by Dr. Heath and specifically noted her continued paranoia and hyper-manic state and opined that the benefits of forced treatment outweighed the possible risks and side effects. See Mobley Affidavit dated April 16, 2008. However, as the records at Three Rivers show, by June 16, 2005, Ms. Argoe started voluntarily taking the prescribed medication (unforced) and the Supreme Court referenced this fact in the Argoe opinion. See also Dr. Davis deposition, Page 172, Line 17 through Page 173, Line 5.)

Most importantly, after Ms. Argoe voluntarily began to take her medication the Probate Court ordered Ms. Argoe to continue in-patient treatment and undertake out-patient treatment for 12 months following discharge from Three Rivers. Ms. Argoe continued voluntarily to take the same type of prescribed medications and had the same type of therapy, but with the ability to do what she wanted to do when she was not at the Mental Health Center. See, Dr. Davis deposition, Page 156, Lines 4-12.

Based upon the facts taken in the light most favorable to Ms. Argoe, we respectfully submit that there is no issue of material fact and, based upon existing case law, the remaining defendants are entitled to summary judgment as a matter of law.

/s James E. Parham, Jr.
James E. Parham, Jr.
Attorney for the Defendant,
Cheryl C. Dodds, M.D.

/s William H. Davidson, II
William H. Davidson, II, Esquire
Attorney for the Defendant,
Phyllis Bryant-Mobley, M.D.

/s Andrew N. Cole
Andrew Cole, Esquire
Attorney for the Defendant,
Three Rivers

October 7, 2013

DLSCN 01/11/12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT

Martha Lewin Argoe,	)	
	)	Civil Action No.: 2007-CP-32-1981
Plaintiff,	)	
	)	
vs.	)	
	)	
Three Rivers Behavioral Health, LLC and Psychiatric Solutions, Inc., its successor, Phyllis Bryan-Mobley, MD, Aiken Regional Medical Center-Aurora Pavilion, David A. Steiner, MD, Cheryl C. Dodds, MD, Doris Ann Burrell, RN and Carolina Care Plan,	)	**SECOND AMENDED COMPLAINT (Jury Trial Demanded)**
Defendants.	)	

Based upon the Order of the Honorable Michael G. Nettles dated December 28, 2011, Plaintiff files this Second Amended Complaint by and through her undersigned counsel and would show unto the Court as follows:

NATURE OF CASE

1. This is a medical negligence case arising from a forced inpatient psychiatric evaluation which began on or about June 7, 2005. In addition, Plaintiff has asserted causes of action for assault and battery related to psychiatric medications she was forced to take but which were not medically necessary or medically warranted. In addition, Plaintiff has asserted causes of action against Carolina Care Plan because of that party's role in the Plaintiff's forced inpatient hospitalization.

DLSCN 01/11/12

60. Defendants, individually and/or by and through their agents, employees, servants, representatives, and/or partners, breached their duties in one or more of the following particulars:

a. In failing to properly, completely and thoroughly evaluate the Plaintiff to determine if she was a danger to herself or others;

b. In continuing to commit the Plaintiff for involuntary inpatient psychiatric treatment when the Plaintiff was neither a threat to herself or others and her medical condition did not warrant such forced, involuntary, inpatient treatment;

c. In failing to timely and appropriately recognize that the Plaintiff was not a threat to herself or others and did not need to be involuntarily committed;

d. In failing to reasonably investigate the allegations that were made against the Plaintiff by her now ex-husband and son regarding her condition;

e. In failing to conduct a reasonable and prudent examination as reasonable and prudent psychiatrists, psychiatric nurses and psychiatric medical professionals would under like or similar circumstances;

f. In failing to appropriately treat and care for the Plaintiff;

g. In failing to recognize and diagnose that the Plaintiff was not a threat to herself or others;

h. In paying for medical care and treatment that was neither reasonable nor necessary and thereby creating a monetary incentive to the healthcare providers to continue to detain Plaintiff for inpatient psychiatric hospitalization;

i. In committing medical assault on the Plaintiff by putting her in reasonable fear of being forced to take mind-altering medication and drugs that were not medically necessary or medically warranted given Plaintiff's condition;

j. In committing medical battery on the Plaintiff by in fact forcing her to take mind-altering medications and drugs that were not medically necessary or medically warranted given Plaintiff's condition; and

k. In such additional particulars as may be learned through discovery and/or proven at trial.

61. As a direct and proximate result of Defendants' negligent, grossly negligent, wanton, and/or reckless conduct as described more fully above, Plaintiff suffered injuries and damages which included but are not necessarily limited to an extended period of involuntary commitment and hospitalization against her will, the administration of drugs and medications against her will, mental anguish and anxiety as a result of her involuntary commitment, lost wages and such other actual, special and/or consequential damages as may be proven at trial.

62. Plaintiff hereby demands judgment against the above named Defendants and seeks damages for all actual, consequential and/or special damages plus an appropriate amount of punitive damages (as determined by a jury).

WHEREFORE, Plaintiff prays that the Court find for the Plaintiff and against the Defendants (jointly and severally) and that Plaintiff be awarded all damages allowed by law including but not necessarily limited to actual damages, consequential damages, special damages and punitive damages in an appropriate amount (as determined by a jury), that the Defendants

DLSCN 01/11/12

In The Matter Of:

MARTHA LEWIN ARGOE vs.

THREE RIVERS BEHAVIORAL CENTER, LLC, et al.

DAVE DAVIS, M.D.

May 30, 2013

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Min-U-Script® with Word Index

1 A. Most people who are delusional are
2 delusional about something all the time unless they
3 get cured --
4 Q. Okay.
5 A. -- treatment or whatever.
6 Q. By medications?
7 A. Cured of that. Well, that's one way,
8 shock treatment, psychotherapy, you know.
9 Q. Any other criticisms you have of
10 Dr. Mobley?
11 A. That she gave her medicine.
12 Q. That what? What?
13 A. Gave her medicine.
14 Q. And what's your -- you're saying she
15 shouldn't have given her medicine?
16 A. Absolutely not.
17 Q. Why not?
18 A. No indication for it. She gave her
19 dangerous medicine. These are not medications that
20 don't have any side effects or long-term side effects.
21 They do. And I don't know what she was giving them to
22 her for.
23 Q. Are you aware of any side effects
24 Ms. Argoe had as a result of medications?
25 A. No.

1 medication?
2 A. Sure.
3 Q. You may have answered this earlier, but do
4 you have any evidence that the fact she was on these
5 antipsychotic medications has caused her any physical
6 or mental damage?
7 A. No.
8 Q. And I didn't see anything in your
9 assessment of Ms. Argoe in April of 2008, either
10 through your database or your interview with her or
11 even the testing, did you see any residual problems
12 they she had from being involuntary committed for 41
13 days?
14 A. Yeah, she was mad as hell.
15 Q. Other than mad? I'm mad that I'm sitting
16 here.
17 A. Well, she had to go through all this
18 litigation. Endless expenses.
19 Q. I'm talking about physically or mentally,
20 any residual problems from the admission other than
21 anger?
22 A. I think stress, a lot of stress from
23 having to, you know, go through the Court system and
24 have to keep being involved in all this long,
25 drawn-out litigation.

1 Q. Other than stress from this litigation,
2 anything else?
3 A. I guess -- I guess we mentioned expense,
4 correct?
5 Q. Yes, sir.
6 A. No.
7 Q. Okay. So as I understand it, there are no
8 residual damages from medications? There's no
9 physical or mental damages from the inpatient
10 admission for 41 days other than anger, stress from
11 the litigation she's filed as a result of that
12 inpatient admission and the expense?
13 A. Well, I mean --
14 MR. DODSON: I object to form.
15 THE WITNESS: -- she was deprived of her
16 liberty.
17 Q. (By Mr. Davis) I understand the inpatient
18 admission itself. I'm talking about afterward.
19 A. Well, having to go through all that
20 outpatient treatment, you can count that.
21 Q. Does Dr. Dodds have any responsibility for
22 that?
23 A. I think that at any point Dr. Hooker, Dr.
24 Steiner, Dr. Mobley, even the doctors that are on
25 call, Dr. Heath and Dr. Dodds and Dr. Rema and

1 Q. The dates?
2 A. Well, I couldn't read what they said, who
3 they were or couldn't read their signature or who they
4 were.
5 Q. Your statement about not being seen every
6 day is your review thinking there's not a progress
7 note for each day?
8 A. That -- yeah, we can go through.
9 Q. I don't want -- is that what it's based
10 on?
11 A. Right.
12 Q. So if we determine there was a progress
13 note for each day, you would be satisfied?
14 A. Right. You may know the names of some of
15 these people. If she was seen every day, that meets
16 the standard of care.
17 Q. And do you understand from your review of
18 the record that Ms. Argoe made a decision -- let me
19 back up.
20 In your opinion, she was competent and
21 lucid to make decisions in that involuntarily
22 commitment, correct?
23 A. Correct.
24 Q. So if Ms. Argoe made a voluntary decision
25 to take the medication, that's within her right, isn't

1 it?
2 A. It is.
3 Q. And you reviewed the record where she did
4 start voluntarily taking those medicines?
5 A. Yes, she did.
6 Q. Okay.
7 MR. DAVIS: Do we really want to read
8 these notes?
9 (Off the record.)
10 THE WITNESS: This answers the first
11 question that you asked me, the first time I was
12 contacted was 3/25/08 by Mr. Warner. He said
13 call him back, have him interrupted, that is a
14 note from my office manager. Possible new case.
15 Argoe versus Three Rivers. Behavioral facility
16 and about three doctors. That's signed by
17 Deborah.
18 And then I talked to him on the telephone
19 3/25/08, these are my notes. Martha Argoe, 65.
20 Husband alcoholic. Son 40. Affluent
21 inheritance. Marital problems. 2005 took POA
22 made son her agent. Husband and son went to
23 attorney together to put her into a mental
24 hospital. Parenthesis, no history, end
25 parenthesis. Husband took her to a mental health

1 either and discharged or petitioned the Court to get
2 her discharged?
3 A. Right.
4 Q. Other than the fact that when she was in
5 Three Rivers she is involuntary and can't leave with
6 her own decision, at Three Rivers she was getting
7 therapy and getting medications, correct?
8 A. Right.
9 Q. The only difference between that and a
10 year of outpatient is that she could come and go as
11 she pleases after she had the visits, correct?
12 A. Right. Oh, yeah, while we're talking
13 about that, let me say something else I just thought
14 of. This is about Dr. Mobley. I'm really wondering
15 why she gave her a shot of medication right before she
16 went to court. That seemed inappropriate to me.
17 Okay.
18 Q. And I may have misunderstood when you were
19 asked some questions at the beginning of the
20 deposition, but did you say that it's your experience
21 that, essentially, in the legal aspect of these
22 involuntary claims, the judge always admits people?
23 A. I just said I did a study some years ago
24 in DeKalb County, the next county over, they did -- in
25 that hundred cases, they did every time what the

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF LEXINGTON	)	
Martha Lewin Argoe,	)	Civil Action No. 07-CP-32-1981
Plaintiff,	)	
v.	)	
Three Rivers Behavioral Center, LLC and Psychiatric Solutions, Inc., It's Successor; Phyllis Bryant-Mobley, M.D.; Glenn Hooker, M.D.; Aiken Regional Medical Center, Aurora Pavilion; David A. Steiner, M.D.; Cheryl C. Dodds, M.D.; Doris Ann Burrell, R.N.; Carolina Care Plan; James F. Walsh, Jr.,	)	**AFFIDAVIT OF PHYLLIS BRYANT-MOBLEY, M.D.**
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, PHYLLIS BRYANT-MOBLEY, M.D., who first being duly sworn deposes and says that:

1. I am a Physician licensed to practice medicine in the State of South Carolina. I am Board Certified in General Psychiatry and Neurology. At the time of the matters alleged in the Complaint, I had privileges to provide psychiatric care to patients in the Three Rivers Center for Behavioral Health (Three Rivers).

2. Upon information and belief, by Order of the Orangeburg County Probate Court dated June 6, 2005, Ms. Argoe was involuntarily committed to the Aurora Pavilion at Aiken Regional Medical Center on June 8, 2005. I had no involvement in these proceedings. Because of Ms. Agroe's insurance coverage, she was transferred the following day to Three Rivers where I became Ms. Argoe's admitting and then attending Psychiatrist.

3. Pursuant to my initial psychiatric evaluation of June 10, 2005, it was my psychiatric opinion that Ms. Argoe was suffering from bipolar disorder I, with manic and psychotic features. Additionally, I was concerned that Ms. Argoe might also be suffering from obsessive compulsive disorder (OCD). I felt at that time her global assessment of functioning (GAF) score was 25. Such a score is indicative of behavior considerably influenced by delusions and impairment in judgment. (See Exhibit 1, attached hereto.)

4. Internist Dr. Nehal Desai evaluated Ms. Argoe at my request and also found symptoms consistent with paranoid ideation and bipolar disorder and noted these in his evaluation and assessment. (See Exhibit 1, attached hereto.)

5. Because Ms. Argoe was refusing medications, on June 13, 2005 I asked for a second opinion and consult with Dr. Heath as to the appropriateness of forced medication administration in Ms. Argoe's situation. Dr. Heath evaluated Ms. Argoe on June 14, 2005 and specifically noted her continued paranoia and hypomanic mood. It was his opinion that the benefits of forced treatment outweighed the possible risk and side effects. (See Exhibit 1, attached hereto.)

6. Pursuant to directions from the Probate Court, I examined Ms. Argoe as a designated examiner for mental illness. My findings were presented to the Darlington County Probate Court on or about June 21, 2005. Again, I found that Ms. Argoe was mentally ill and in need of involuntary treatment. Therefore, involuntary hospitalization was recommended as well as involuntary outpatient treatment following her hospital discharge once clinically stable. Upon information and belief, my medical opinions were considered by Judge Marvin Lawson, Probate Judge for Darlington County during a full hearing held June 21, 2005 regarding the issues surrounding Ms. Argoe's mental illness, involuntary commitment and treatment. (See Exhibit 1, attached hereto.)

7. Pursuant to the hearing of June 21, 2005, the Court ordered that Ms. Argoe be committed to a Mental Health Facility for inpatient care and treatment and ordered that upon discharge she was to follow-up with her local Mental Health Center for continued Court ordered outpatient treatment over a period of 12 months because Ms. Argoe was adjudged to lack insight and/or capacity to make reasonable decisions with respect to her treatment and because she was a danger to herself or others. (See Exhibit 1, attached hereto.)

8. I provided care and treatment to Ms. Argoe until June 27, 2005 when Dr. Cheryl Dodds assumed Ms. Argoe's care and may have briefly discussed Ms. Argoe and her care with Dr. Dodds. According to the Three Rivers' records, Ms. Argoe ultimately and voluntarily consented to taking her prescribed medications beginning on or about June 16, 2005. Ms. Argoe improved and became stable on her medication regimen and was discharged to live with her son on July 20, 2005. Ms. Argoe's discharge diagnosis was bipolar disease, manic with psychosis. This diagnosis is consistent with my initial assessment and observations during the time period that I provided care and treatment to Ms. Argoe prior to Dr. Dodds assumption of Ms. Argoe's care and her ultimate discharge from Three Rivers.

9. Even without the historical information provided by multiple sources regarding Ms. Argoe's pre-hospitalization actions, behavior and conduct, I still would have diagnosed Ms. Argoe with a mental illness based upon my examinations and observations of her while under my care at Three Rivers. Further, my findings and diagnoses were corroborated by Drs. Dodds, Heath and Desai.

10. I have not seen or treated Ms. Argoe since her discharge on July 20, 2005. I have not been involved in any subsequent Probate or Family Court hearings involving the Argoes since her discharge.

11. I have not released any of Ms. Argoe's mental health records to any third party, including any Probate or Family Courts, and have not released any information or opinions about Ms. Argoe's mental health or diagnoses except for the information and opinions provided to the Darlington County Probate Court in my role as a designated medical examiner and to Attorney James Walsh, Jr., for use by the Orangeburg County Probate Court in custodian and guardianship proceedings pursuant to that Court's Order appointing me a Physician Examiner for Ms. Argoe. (See Exhibit 1, attached hereto.)

12. I never spoke to or with any of the defendants named in the Lexington County and/or Beaufort County cases about Ms. Argoe's mental healthcare and treatment other than what is mentioned above and to obtain information regarding Ms. Argoe's symptoms from her husband and son and her brother and sister. I never spoke to or with any of the defendants or conspired with any of the defendants about helping Ms. Argoe's husband and son take real and personal property from Ms. Argoe or to secure insurance reimbursement for Ms. Argoe's medical treatment to enrich any defendant.

13. I did not violate any standards of medical or psychiatric practice in my care and treatment of Ms. Argoe that are a proximate cause of her alleged injuries and damages.

FURTHER AFFIANT SAYETH NOT.

Phyllis Bryant-Mobley, MD

PHYLLIS BRYANT-MOBLEY, M.D.

SWORN TO BEFORE ME THIS 16th

DAY OF APRIL, 2008

N & M Bowlt

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 1-17-2013