

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
William P. Keesley, Circuit Court Judge

Case No. 2007-CP-32-1981

RECEIVED
AUG 20 2015
SC Court of Appeals

Martha Lewin Argoe, Appellant,

v.

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

**BRIEF OF RESPONDENT
PHYLLIS BRYANT-MOBLEY, M.D.**

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STATEMENT OF THE CASE

This appeal arises out of the involuntary commitment of the Appellant Martha Lewin Argoe ("Argoe") to Three Rivers Behavioral Health, LLC, a psychiatric, inpatient facility in June 2005. The Appellant appeals several summary judgment orders including a grant of partial summary judgment in favor of the Respondent Phyllis Bryant-Mobley, M.D., a psychiatrist who briefly provided care for Argoe at Three Rivers Center for Behavioral Health ("Three Rivers"). Dr. Bryant-Mobley was also appointed as a designated examiner for the Darlington County Probate Court for involuntary commitment proceedings held on June 21, 2005.

The background facts and the procedural history are largely set forth in the published opinion of the South Carolina Supreme Court in *Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 710 S.E.2d 67 (2011) (*Argoe II*).

Pursuant to S.C. Code Ann. § 44-17-410, Argoe's husband "filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005." 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 [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 [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." 710 S.E.2d at 70. Dr. Hooker felt that 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. (R. 2546). Therefore, based on his assessment, Dr. Hooker was of the opinion within a reasonable degree of medical certainty that Argoe possessed a substantial risk of physical harm to herself and that involuntary emergency hospitalization was necessary. (R. 2546).

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 Argoe at the Aurora Pavilion. Dr. Bryant-Mobley was not involved in any of these proceedings or events. (R. 2548).

"On June 9, 2005, due to health insurance constraints, [Argoe] was transferred and admitted to Three Rivers Behavioral Health, L.L.C." *Id.* 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 Dr. Phyllis Bryant-Mobley, a provisional diagnosis was made that [Argoe] was suffering from bipolar disorder with manic and psychotic features." *Id.* At that time, Dr. Bryant-Mobley determined that Argoe's global assessment of functioning (GAF) score was 25 which indicated behavior considerably influenced by delusions and impairment in judgment. (R. 2549). Additionally, internist Dr. Nehal Desai evaluated Argoe at Dr. Bryant-Mobley's request and also found symptoms consistent with paranoid ideation and bipolar disorder. (R. 2549).

"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." *Id.* "That same day Judge Lawson appointed Dr. Bryant-Mobley and Doris Ann Burrell, a registered nurse, as designated examiners." *Id.* "On June 14, 2005, [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 Argoe's mental health to Judge Lawson. (R. 1885-1886, 2549). At the hearing, Judge Lawson also considered the testimony of Argoe's family members, including testimony from her brother and her sister, and the testimony of Nurse Burrell. (R. 1886). "[Argoe] and her attorney were in attendance and participated in the hearing." *Id.* After considering testimony from Dr. Bryant-Mobley, Nurse Burrell, and Argoe's 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." *Id.* This Order was entered pursuant to authority set forth in S.C. Code Ann. § 44-17-580. The Probate Court retained jurisdiction over Argoe to insure compliance with the Order.

Because Ms. Argoe was refusing medications, on June 13, 2005, Dr. Bryant-Mobley asked for a second opinion and consulted with Dr. Heath, the medical director of the facility, as to the appropriateness of forced medication administration in Ms. Argoe's situation. Dr. Heath personally evaluated Argoe on June 14, 2005, and specifically noted her continued paranoia and hypomanic mood. (R. 1871, 2549).

Dr. Bryant-Mobley provided care and treatment to Argoe at Three Rivers until June 27, 2005, when Dr. Cheryl Dodds assumed Argoe's care. Argoe ultimately and voluntarily consented to taking her prescribed medications beginning on or about June 16, 2005. "On July 20, 2005, [Argoe] was discharged into the care of her son after receiving treatment at Three Rivers and consenting to voluntarily taking her prescribed medication." *Id.* Dr. Dodds' discharge diagnosis was bipolar disease, manic with psychosis, which was consistent with Argoe's initial diagnoses recorded by other evaluating and treating physicians. *Id.* (R. 2550, 2559).

Dr. Bryant-Mobley has not seen or treated Argoe since June 27, 2005, and was not involved in any subsequent Probate Court or Family Court hearings involving the Argoes. (R. 2550).

On June 6, 2007, Argoe filed the present suit against her husband and son, as well as the hospitals, physicians, and nurses involved in the involuntary commitment proceedings. This case has been the subject of two prior appeals to the South Carolina Supreme Court as well as an extensive procedural history. Following the remand after *Argoe II*, Dr. Bryant-Mobley and the other Respondents filed motions for summary judgment. Those motions were heard by Circuit Court Judge William P. Keesley on August 29, 2013. At that point, the only remaining cause of action against Dr. Bryant-Mobley was a medical malpractice claim. All other claims had previously been dismissed.

On March 7, 2014, Judge Keesley issued his Order Granting Partial Summary Judgment in Favor of Defendants Three Rivers Behavioral Health, LLC, Phyllis Bryant-Mobley, M.D. and Cheryl C. Dodd, M.D. (R. 12-23). With that Order, Judge Keesley granted partial summary judgment precluding liability "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." (R. 23). Summary judgment was denied "regarding the time period of Ms. Argoe's continued in-patient commitment from June 22, 2005, to July 20, 2005." (R. 23).

Accordingly, Judge Keesley ruled that "[a]t 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." (R. 23).

The Appellant Argoe filed a Rule 59(e) motion, which was denied by order filed June 9, 2014. (R. 32-35). This appeal followed.

ARGUMENTS

I. The Circuit Court was correct in applying the doctrines of *res judicata* and law of case based on the decision of the South Carolina Supreme Court in an earlier appeal in that same civil action.

As her initial issue on appeal directed at the Respondent Phyllis Bryant-Mobley, M.D.,¹ the Appellant Martha Lewin Argoe contends that Circuit Judge William P. Keesley erred in applying the doctrine of *res judicata* to bar her medical malpractice claim for all conduct occurring on or before June 21, 2005. Argoe addresses specifically the "claim preclusion" component of *res judicata* and argues that her malpractice claim is not barred because that claim was not previously litigated.

Argoe, however, has entirely misapprehended Judge Keesley's ruling. As an initial matter, Judge Keesley focused on the South Carolina Supreme Court's decision in an earlier appeal from this very same litigation, *Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 710 S.E.2d 67 (2011) (*Argoe II*). In that decision, the Supreme Court applied the doctrine of *res judicata* and concluded that Argoe "was precluded from collaterally attacking the underlying commitments orders." 710 S.E.2d at 72. The Supreme Court focused on the appeal from Probate Court that was

¹ The only issues on appeal directed at the partial summary judgment in favor of Dr. Bryant-Mobley are the first and second issues.

heard and affirmed in its entirety by Circuit Judge Diane Goodstein. Accordingly, in *Argoe II*, the Supreme Court ruled as follows: "Because Judge Goodstein's order constitutes a final adjudication regarding the validity of the commitment proceedings, the doctrine of *res judicata* precludes [Argoe] from asserting any challenge to the commitment orders." *Id.* The Supreme Court explained that "the underlying commitment orders were valid," and further observed that the commitment orders "were procedurally proper and factually substantiated by court-appointed medical personnel." 710 S.E.2d at 73. Ultimately, the Supreme Court concluded that the conduct toward Argoe was "lawful, justified and reasonable." 710 S.E.2d at 75.

Referring to those rulings from *Argoe II*, Judge Keesley indicated that he was "not able to reconcile" those rulings "with the assertions that the involuntar[y] commitment of Ms. Argoe constituted medical malpractice." (R. 20). Judge Keesley therefore "accept[ed] the argument of the remaining three defendants that they are entitled to a determination that is *res judicata* and the law of this case that the commitment process was 'lawful, justified, and reasonable.'" (R. 20).

Thus, in granting partial summary judgment to Dr. Bryant-Mobley, Judge Keesley relied on two doctrines, *res judicata* and law of the case. In her brief, Argoe complains only about Judge Keesley's application of the doctrine of *res judicata*. She raises no exception to his reliance on the law of the case doctrine, and for that reason, this issue fails by application of the "two-issue" rule. In applying the "two-issue" rule, the Supreme Court explained that "where a decision is based on more than

one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900, 903 (2010). Similarly, in *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986), this Court held that "[a]n alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal." 348 S.E.2d at 845.

Nonetheless, Judge Keesley was correct in finding both *res judicata* and law of the case as applicable. Argoe's discussion of *res judicata* fails to recognize the broad concept of *res judicata* under South Carolina law. Argoe addressed *res judicata* as being limited to claim preclusion; however, claim preclusion is only one component. The Supreme Court, in fact, has recently reaffirmed that "[r]es judicata encompasses both issue preclusion and claim preclusion." *Catawba Indian Nation v. State of South Carolina*, 407 S.C. 526, 756 S.E.2d 900, 906 (2014). This Court recently agreed. See, *Dozier v. American Red Cross*, 411 S.C. 274, 768 S.E.2d 222, 230 (Ct. App. 2014) ("Res judicata encompasses both issue preclusion and claim preclusion"). Therefore, the broad concept of *res judicata* includes claim preclusion, consistent with Judge Keesley's application herein. It is also consistent with *Argoe II*, where the Supreme Court referred to the applicable doctrine as "res judicata" but clearly applied issue preclusion. The Court in *Argoe II*, in fact, explained that one of the elements was proof of the "adjudication of the *issue* in the former suit." *Argoe II*, 710 S.E.2d at 72. (Emphasis added).

As the Supreme Court explained in *Argoe II*, the elements for issue preclusion are (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Id.* Each of those elements has been demonstrated in the case at bar. Both Argoe and Dr. Bryant-Mobley are parties to both this case and *Argoe II*. In fact, they are the same suit. *Argoe II* is simply an earlier appeal in the very same civil action. Moreover, the identity of the subject matter is the same – it is the same case. Finally, the issue litigated is the same, that is, whether the commitment proceedings and the probate court orders were lawful and valid. Argoe complains that her medical malpractice claim was not litigated in *Argoe II*; however, that has no relevance to *issue* preclusion.² Contrary to the suggestion by Argoe, Judge Keesley simply did not rely on claim preclusion.³

Moreover, even if *res judicata* somehow does not apply, clearly the law of the case doctrine applies. It is frankly frivolous that Argoe is even making this argument. *Argoe II* and the present appeal are *part of the very same civil action*. These are simply successive appeals in *the same case*. There is not a more obvious

² This Court has explained that "[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. South Carolina Department of Transportation*, 385 S.C. 550, 684 S.E.2d 779, 782 (Ct. App. 2009). Thus, it makes no difference that the medical malpractice claim was not litigated as part of *Argoe II*. Issue preclusion is nonetheless applicable.

³ Judge Keesley, in fact, acknowledged that "the plaintiff's sole legal theory is now medical malpractice, not false imprisonment, defamation, or intentional infliction of emotional distress." (R. 19).

application of the law of the case doctrine than what is presented here. The rulings by the Supreme Court in *Argoe II* are the *law of this very case*. "Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Sloan Construction Co., Inc. v. Southco Grassing, Inc.*, 395 S.C. 164, 717 S.E.2d 603, 606 (2011). "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Id.* See also, *Judy v. Martin*, 381 S.C. 455, 674 S.E.2d 151 (2009). The Supreme Court has also previously explained that "a decision of this court on a former appeal is the law of the case. The questions therein decided are *res judicata* and this court will not on a subsequent appeal review its former decision." *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 166 S.E.2d 297, 299 (1969).

In sum, the rulings by the Supreme Court in *Argoe II* are the law of this case. Whether applying the doctrine of *res judicata* or law of the case doctrine or both, as Judge Keesley did, the rulings in *Argoe II* are preclusive and binding with respect to the continued adjudication of this case. Judge Keesley, therefore, was correct in concluding that the law of this case holds that "the commitment process was lawful, justified and reasonable." (R. 20).

II. The Circuit Court correctly ruled that the Respondent Bryant-Mobley was entitled to quasi-judicial immunity.

The Appellant Argoe contends that Judge Keesley erred in ruling that Dr. Bryant-Mobley was entitled to quasi-judicial immunity consistent with the decision of the South Carolina Supreme Court in *Vaughan v. McLeod Regional Medical Center*, 372 S.C. 505, 642 S.E.2d 744 (2007). In his order, relying on *Vaughan*, Judge Keesley ruled that the physicians are entitled to "absolute, quasi-judicial immunity" when "acting within the scope of judicial directives in an involuntary commitment setting." (R. 20). Based thereon, Judge Keesley granted partial summary judgment to Dr. Bryant-Mobley "for any acts or omissions that were within the scope of judicial directives in an involuntary commitment proceeding." (R. 21).

In then assessing what falls "within the scope of judicial directives," Judge Keesley made three separate rulings, which are as follows:

First, Judge Keesley precluded Argoe from recovering for any alleged acts or omissions that occurred on or before June 21, 2005, which was the date that Probate Judge Marvin Lawson found Argoe mentally ill and in need of in-patient psychiatric care. (R. 22). Argoe does not challenge this ruling on appeal.

Second, Judge Keesley ruled 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." (R. 22). He concluded that

"these Defendants are entitled to absolute quasi-judicial immunity regarding the diagnosis of mental illness." (R. 22). Argoe does not appear to challenge this ruling on appeal, although that is somewhat unclear.

Third, Judge Keesley ruled that Argoe was precluded from recovering for any conduct that occurred after July 20, 2005. There is no evidence of any involvement by Dr. Bryant-Mobley with Argoe's care after June 27, 2005, and certainly none after July 20, 2005. Argoe does not challenge this ruling on appeal.

Nonetheless, Argoe argues on appeal that Judge Keesley committed error because the "decision as to when to release Ms. Argoe from involuntary commitment" is not entitled to quasi-judicial immunity. However, for the period of June 22, 2005 through July 20, 2005, Judge Keesley left open for further adjudication any issues pertaining to Argoe's in-patient treatment, with the one exception that Judge Keesley precluded recovery "for an alleged misdiagnosis of mental illness." (R. 22).

In his second issue on appeal, Argoe claims that she should be able to assert malpractice with respect to the release decision. Argoe argues that the Respondents "had a duty to release Ms. Argoe from involuntary commitment when she was no longer a danger to herself or others." *See*, Appellant's Brief, p. 19. While Dr. Bryant-Mobley disagrees with Argoe's position, that issue remains for future adjudication to the extent that Argoe alleges that she should have been released from in-patient care between June 22, 2005 and July 20, 2005. Summary

judgment, however, was not granted on that issue.

As to the alleged misdiagnosis of mental illness, Dr. Bryant-Mobley submits that Argoe has not appealed summary judgment which was granted on that issue. The Probate Court made a determination on June 21, 2005, that Argoe was mentally ill. As the Supreme Court found in *Argoe II*, the commitment orders "were procedurally proper and factually substantiated by court-appointed medical personnel." *Argoe*, 710 S.E.2d at 73. Moreover, Argoe represents in her brief that she "is not challenging the testimony or opinions given by Respondents in the Probate Court." *See*, Appellant's Brief, p. 17. Yet, that is followed by one inconsistent and conclusory statement: "Respondents' misdiagnosis of Ms. Argoe and their treatment of her based on that misdiagnosis was medical/psychiatric malpractice." *See*, Appellant's Brief, p. 18.⁴

Nonetheless, to the extent Argoe is challenging summary judgment on any claim that her mental illness was misdiagnosed, the ruling of Judge Keesley should be affirmed for two reasons. As indicated, the Probate Court made a determination on June 21, 2005, that Argoe was mentally ill. The law of this case, as established by the Supreme Court in *Argoe II*, has established that that order was factually

⁴ It is well settled that "an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

substantiated and must be "presumed valid." *Argoe*, 710 S.E.2d at 73.

Moreover, in *Vaughan v. McLeod Regional Medical Center*, 372 S.C. 505, 642 S.E.2d 744 (2007), the Supreme Court held that a physician acting as a court-appointed medical examiner in a guardianship proceeding is protected by common law absolute quasi-judicial immunity in a negligence action arising from his determination that the patient was permanently incapacitated. The Supreme Court explained that "[c]ourt-appointed examiners are essentially an arm of the judiciary." 642 S.E.2d at 748. As an additional example pertinent to the present case, the Supreme Court favorably cited authority stating that "[a] psychiatrist or other mental health practitioner appointed by the court to make a psychiatric evaluation of a person or to give an opinion as to his or her sanity enjoys immunity from suit for damages based on such opinion or evaluation, where he or she has acted in accordance with the governing statute." *Id.* See also, *Bailey v. McGill*, 247 N.C. 286, 100 S.E.2d 860 (1957) (cited favorably in *Vaughan* for proposition that physician testifying in commitment proceeding is entitled to absolute immunity).

Based on *Vaughan*, Dr. Bryant-Mobley, who was the designated examiner who found Argoe was mentally ill, is entitled to quasi-judicial immunity for making that diagnosis. To the extent that Argoe alleges that it was an incorrect diagnosis, Dr. Bryant-Mobley is absolute immune from suit. The grant of summary judgment by Judge Keesley on any claim of misdiagnosis was, therefore,

properly entered.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Phyllis Bryant-Mobley, M.D. respectfully requests that this Court affirm the Orders issued by Circuit Judge William P. Keesley granting partial summary judgment in favor of Dr. Bryant-Mobley and denying the Appellant's subsequent motion for reconsideration.

Respectfully submitted,

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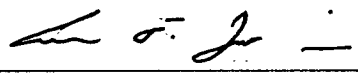
CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent Phyllis Bryant-Mobley, M.D. certifies that the Final Brief of Respondent Phyllis Bryant-Mobley, M.D. complies with Rule 211(b), SCACR.

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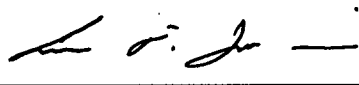
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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent Phyllis Bryant-Mobley, M.D. certifies that the Final Brief of Respondent Phyllis Bryant-Mobley, M.D. complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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August 18, 2015

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for Respondent Phyllis Bryant-Mobley, M.D., does hereby certify that service of the **Brief of Respondent Phyllis Bryant-Mobley, M.D.** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 18th day of August 2015:

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