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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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, Appellant,

v.

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, Respondent,

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. **DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS UNDER THE DOCTRINE OF *RES JUDICATA* WHEN MS. ARGOE HAD NEVER LITIGATED A MEDICAL MALPRACTICE CLAIM OR ANY OTHER CLAIM AGAINST RESPONDENTS?**

2. **DID THE CIRCUIT COURT ERR IN HOLDING MS. ARGOE'S MEDICAL MALPRACTICE CLAIMS AGAINST MOBLEY, DODDS AND THREE RIVERS WERE BARRED BECAUSE OF QUASI-JUDICIAL IMMUNITY WHEN THE CARE AND TREATMENT THEY PROVIDED MS. ARGOE, INCLUDING INVOLUNTARY COMMITMENT, WASN'T MANDATED OR DICTATED BY ANY COURT OR TRIBUNAL?**

3. **DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT TO STEINER BASED UPON THE DOCTRINE OF QUASI-JUDICIAL IMMUNITY WHEN NO COURT ORDER OR OTHER LEGAL PROCESS COMPELLED STEINER TO DETAIN MS. ARGOE INVOLUNTARILY AND AGAINST HER WILL AND WHEN HE UNDERTOOK THIS ON HIS OWN INITIATIVE?**

4. **DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT TO STEINER ON THE GROUNDS THAT MS. ARGOE HAD NOT PRESENTED EVIDENCE ON A BREACH OF THE STANDARD OF CARE AND CAUSATION WHEN IN FACT MS. ARGOE PRESENTED MULTIPLE EXPERT WITNESSES WHO OFFERED OPINIONS AGAINST STEINER ON THE STANDARD OF CARE AND CAUSATION?**

5. **DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT TO BURRELL BECAUSE HER ROLE IN THE INVOLUNTARY COMMITMENT OF MS. ARGOE WAS LIMITED TO A DESIGNATED EXAMINER WHEN BURRELL READILY ADMITTED AT DEPOSTION THAT SHE DID NOT ATTEMPT TO PERFORM THE ACTUAL DUTIES OF A DESIGNATED EXAMINER?**

STATEMENT OF CASE

The case now before this Court has a long history. 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. Record on Appeal (hereinafter referred to as "ROA") p. 150. Respondents to this appeal were a part of that scam and scheme. ROA pp. 148-161.

In 2004 and 2005, Ms. Argoe's husband, G. Lewis Argoe, Jr., was abusive and plotted to steal her assets. ROA pp 148-161. 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. ROA pp. 148-161. Toward that end, Mr. Argoe, who was an attorney himself, filed an Application for Involuntary Emergency Hospitalization for Mental Illness in the Orangeburg County Probate Court on June 6, 2005. ROA pp. 2211-2215. Pursuant to S.C. Code Ann. § 44-17-430, the Orangeburg County Probate Court issued an Order of Detention and the following day Ms. Argoe was taken to Orangeburg Mental Health where she was initially seen by Glenn Hooker, M.D. ROA pp. 754-757. Ms. Argoe was discharged that night and she returned to her home without any problems and without incident. ROA pp. 760-761.

Inexplicably, on June 8, 2005, Ms. Argoe was taken back into custody and was taken to Aiken Regional Medical Center/Aurora Pavilion. ROA pp. 765-767. At that time, she was seen by one of the Respondents, David Steiner. ROA pp. 1681-1683. Steiner admitted her to Aiken

Regional/Aurora Pavilion against her will and she was forced to stay overnight in a psychiatric facility. ROA pp. 1681-1686. The following day, June 9, 2005, Ms. Argoe was transferred to Respondent, Three Rivers Behavioral Health, LLC's facility in Lexington, South Carolina. ROA p. 778. The reason for this transfer was because her health insurance provided benefits while at Three Rivers but apparently did not provide benefits at Aiken Regional/Aurora Pavilion. ROA p. 778.

At Three Rivers, Ms. Argoe was seen and treated by Respondent, Phyllis Bryan-Mobley. ROA p. 1813 and pp. 1905-1906. Mobley continued to hold Ms. Argoe involuntarily based on the false allegations of her husband and son who claimed, *inter alia*, that Ms. Argoe had "hallucinations of seeing witches and warlocks", that she was "fearful of people", and that she was "paranoid". ROA pp. 1786-1955 and 2572-2573. During the entire six (6) weeks that Ms. Argoe was involuntarily committed, none of the health care workers who saw and treated her, including Respondents to this appeal, document any hallucinations or other behavior that made Ms. Argoe a danger to herself or others. *See generally*, ROA pp. 1571-1712, 1786-1955 and 1956-2037. Instead of conducting any meaningful psychological or psychiatric testing, Respondents took Ms. Argoe's husband and son at their word. *See generally*, ROA pp. 1571-1712, 1786-1955 and 1956-2037. In fact, the one psychological test that was performed on June 14, 2005 made no finding of a mental illness and noted only: "Marital conflict; alleged victim of abuse." ROA pp. 1786-1955.

The lynch pin of Ms. Argoe's husband and son's scam and scheme to cheat her out of her money and property rested on the action and inaction of the Respondents to this appeal. Ms. Argoe's husband and son banked on the fact that Respondents would simply take their word and perform no meaningful testing while involuntarily committing Ms. Argoe. During her

involuntary commitment, her son used the power of attorney he had obtained from Ms. Argoe shortly before her involuntary commitment to transfer a valuable piece of land from her name to his name.

On June 21, 2005, the Probate Court issued a "Judgment and Order" of involuntary commitment and also required twelve (12) months of involuntary out-patient treatment once Ms. Argoe was released. ROA p. 106. After this Order, the Probate Court had no further involvement. The decision to release Ms. Argoe from involuntary commitment was a clinical judgment to be made by the various healthcare workers who were seeing and treating her. ROA pp. 1066, 1118, 1139, and 1142; ROA pp. 2408-2409 and 2456-2458. Nonetheless, Ms. Argoe was not released from involuntary commitment for six (6) weeks. ROA p. 1995. During most of her forty-two (42) day incarceration, she was not permitted to use a telephone or communicate with the outside world, except with her husband and son who were using her involuntary commitment as part of the plot and ploy to steal from her. ROA p. 1995.

After Ms. Argoe completed her involuntary out-patient treatment, she commenced two (2) lawsuits that were effectively consolidated into the current action. The first lawsuit was filed in Beaufort County and in that action Ms. Argoe sued her husband, son and their attorney, James Walsh, for their roles in her incarceration. She filed a second lawsuit in Lexington County where she sued the Respondents to this appeal as well as others. The case against her son and husband was settled and dismissed. ROA 980-986. The trial court issued separate orders granting other Defendants summary judgment. The granting of summary judgment to those Defendants sparked two (2) appeals which were eventually resolved by the South Carolina Supreme Court.

In the first appeal, Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions, 388 S.C. 394, 697 S.E.2d 551 (2010) (hereinafter Argoe I), the Supreme Court affirmed the

Circuit Court's order granting summary judgment to Attorney James Walsh. Walsh had represented Ms. Argoe's husband in various matters and also played a role transferring land and property from Ms. Argoe to others. In Argoe v. Three Rivers Behavioral Health, LLC, 392 S.C. 462, 710 S.E.2d 67 (2011) (hereinafter 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 Respondents to this appeal 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 against Respondents. During the pendency of the appeals in Argoe I and Argoe II, the case against Respondents was stayed.

Upon remand from the Supreme Court, Ms. Argoe obtained a new attorney because her former attorney, Jan Warner, had died. ROA pp. 2562-2564 and 257-261. Over the objections of Defendants, this Court issued an Order allowing Ms. Argoe to amend her complaint against the remaining Defendants and she did so by making professional and medical malpractice claims against Defendants. ROA pp. 50-54. During the discovery process on the medical and professional malpractice claims, Ms. Argoe dismissed three (3) of the remaining Defendants: Psychiatric Solutions, Inc., Aiken Regional Medical Centers, Inc. and Carolina Care Plan.

Shortly before the case against Respondents was scheduled for a two-week certain trial, the Circuit Court issued three (3) separate Orders granting summary judgment to Respondents. In an Order Granting Partial Summary Judgment in Favor of Defendants Three Rivers Behavioral Health, LLC, Phyllis Bryant-Mobley, MD and Cheryl C. Dodds, MD, the Circuit Court concluded Ms. Argoe's claims were barred under the doctrine of *res judicata* because of the Supreme Court's rulings in Argoe I and Argoe II. The Circuit Court reached this conclusion

even though neither of these Defendants were parties to the appeals in Argoe I and Argoe II and the causes of action addressed by the Supreme Court in Argoe I (legal malpractice, intentional infliction of emotional distress, and abuse of process) and Argoe II (false imprisonment, defamation and intentional infliction of emotional distress) were separate and distinct causes of action than what Ms. Argoe is currently pursuing (medical malpractice). In addition, the Circuit Court "extend[ed]" existing Supreme Court case law and found that Ms. Argoe's claims were barred on the grounds of quasi-judicial immunity despite the fact that the Respondents' decision to release Ms. Argoe from their care, custody and control required no court order, intervention, authorization or any oversight at all from the Court. Similar Orders were issued in favor of David Steiner and Doris Ann Burrell who are also Respondents to this appeal.

Ms. Argoe filed three (3) separate Motions for Reconsideration with the Circuit Court. The Circuit Court denied those three (3) motions in a single Order on Reconsideration on June 6, 2014. It is those four (4) Orders which are the subject of this appeal.

FACTS

To be clear, Ms. Argoe has never suffered from a mental illness. *See generally*, ROA pp. 1044-1239 and 1386-1570. Respondents to this appeal misdiagnosed her as having suffered from a mental illness because they failed to properly evaluate and test her. *See generally*, ROA pp. 1044-1239 and 1386-1570. Instead, Respondents relied on the false accusations of Ms. Argoe's husband and son who stole her property and assets while she was involuntarily committed. *See generally*, ROA pp. 1044-1239 and 1386-1570. As a result of Respondents' misdiagnosis, Ms. Argoe was involuntarily committed for six (6) weeks and forced to take powerful psychiatric medication that she did not want or need for a year. *See generally*, ROA pp. 1044-1239 and 1386-1570.

The plot to involuntarily commit Ms. Argoe started with her husband and son around 2004 and 2005. *See generally*, ROA pp. 148-161. At the time, Ms. Argoe owned land and other assets that she inherited from her parents. ROA p. 719. In essence, the plan was to have Ms. Argoe involuntarily committed and while she was incarcerated to steal from her. *See generally*, ROA pp. 148-161. That plan was put into motion in June, 2005 when her husband at the time filed an Application for Involuntary Emergency Hospitalization for Mental Illness. Based on the Application for Involuntary Emergency Hospitalization for Mental Illness, Ms. Argoe was detained and was initially seen by Glenn Hooker, M.D. on June 7, 2005. ROA pp. 755-759. She was released that same day. ROA pp. 755-759.

The following day, June 8, 2005, Ms. Argoe was taken into custody again and was taken to Aiken Regional Medical Center/Aurora Pavilion. ROA pp. 1681-1683. At Aiken Regional/Aurora Pavilion she saw Respondent, David Steiner. ROA pp. 1681-1683. Steiner performed a "mental status" exam on Ms. Argoe. ROA p. 1603. A mental status exam essentially looks at nine (9) components to determine a patient's mental status: 1. An individual's appearance; 2. Attention and memory; 3. Orientation of time, place and situation; 4. Mood; 5. Thought processes; 6. Safety issues (i.e. suicidal or homicidal thoughts); 7. insight and judgment; 8. Affect or outward representation of mood and 9. Thought content. ROA pp. 1603-1609. According to Steiner, Ms. Argoe's appearance was "normal and appropriate"; Her memory was "normal"; Her "orientation to time and place were normal" and Steiner was never able to conclude that Ms. Argoe was a danger to herself or others. ROA pp. 1611–1621.

At the time that Steiner saw Ms. Argoe, nothing in the Probate Court's Order of Detention required anything of Steiner. The Probate Court's Order of Detention stated: "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." At the time Steiner saw Ms. Argoe, that had already been done and Ms. Argoe had already been released to return home, which in fact she did. ROA pp. 756-761. Nonetheless, Steiner detained Ms. Argoe against her will. ROA pp. 1681-1683.

The following day, Ms. Argoe was transferred to Three Rivers Behavioral Health, LLC in Lexington County. At Three Rivers, she was placed under the custody and care of another Respondent, Phyllis Bryan-Mobley. ROA pp. 1905-1906. Mobley continued her care and treatment of the Plaintiff for approximately two (2) weeks until she went on vacation. ROA pp. 1907-1932. During that two (2) week treatment, Mobley learned that Ms. Argoe actually had a concealed weapons permit to carry a gun and Mobley never undertook any action to have her concealed weapons permit revoked. ROA pp. 1816-1817. During her incarceration at Three Rivers, Ms. Argoe never had any hallucinations about witches or warlocks, she was able to feed herself and take care of herself, she denied her house was bugged, she never expressed any abnormal aversion to dirt and she never exhibited any type of hoarding behavior. ROA pp. 1820-1821; 1828-1829; 1831. All of these were grounds listed in the Application for Involuntary Emergency Hospitalization for Mental Illness filed by her husband. Most importantly, at no time did Ms. Argoe exhibit suicidal or homicidal behavior of any kind. ROA pp. 1848-1849.

Mobley ordered a second opinion and psychological testing from Dr. Tammy Leonhardt. ROA pp. 1864-1866. On June 14, 2005, Dr. Leonhardt saw Ms. Argoe and concluded she was not a danger to herself or other people. ROA pp. 1864-1866 and 1895. The only diagnostic impresses Dr. Leonhardt noted was "marital conflict; alleged victim of abuse." ROA pp. 1864-1866 and 1895. Nonetheless, despite the fact that Mobley had requested the second opinion with

Dr. Leonhardt and even though no Court Order or other legal reason compelled Mobley to detain Ms. Argoe, Mobley continued to keep Ms. Argoe involuntarily committed.

On June 21, 2005, the Probate Court issued a Judgment and Order of judicial involuntary commitment. Nothing in either the Probate Court's Order of Detention or the Judgment and Order of judicial involuntary commitment, limited any healthcare provider's duty to provide competent medical care within the standard of care. Significantly and importantly, at all times relevant, each of the Respondents to this appeal had the full authority and medical duty to discharge Ms. Argoe from involuntary commitment when the medical/psychiatric circumstances warranted. ROA pp. 1044-1239 and 2511-2543.

At the end of June, 2005, Mobley left for an extended vacation and Ms. Argoe's care and treatment was transferred largely to Respondent, Cheryl Dodds. ROA p. 1973. On weekends and at other times when Dodds was not available, a psychiatrist for Three Rivers would see Ms. Argoe. ROA pp. 1864 and 1871. Dodds testified that she did not perform or order any formal psychiatric testing of Ms. Argoe. ROA pp. 1974-1975. During her incarceration and when she was seen by Dodds, Ms. Argoe never demonstrated any suicidal or homicidal behavior and she never indicated or demonstrated any behavior indicating that she was going to hurt herself or another person. ROA pp. 1988-1990. According to Dodds, she continued to detain and incarcerate Ms. Argoe because of "bizarre behavior" such as "going out to eat late at night alone so she can meet up with other Christians." ROA pp. 1986 and 2003-2027. When specifically questioned about "What is bizarre about that, Doctor?", Dodds testified: "I think it's very unusual for a lady who is 62 years old to go out late at night to meet with Christians. That's not common behavior in my church." ROA p. 1986.

Interestingly enough, before Ms. Argoe was incarcerated by Respondents she was seeing a dermatologist in Orangeburg, Gregg J. Colle, M.D. ROA pp 2116-2176. In his medical records and at deposition, Dr. Colle testified that he never saw any abnormal behavior from Ms. Argoe in the years that he treated her. ROA pp. 2116-2176. Friends and acquaintances of Ms. Argoe also testified that Ms. Argoe was completely normal. ROA pp. 2038-2073 and 2074-2115. For example, Kent Whitfield was the manager of Applebee's in Orangeburg, one of the restaurants where Ms. Argoe would eat and that Dodds found "bizarre." ROA pp. 2074-2115. He testified that Ms. Argoe was a regular customer and never exhibited any abnormal behavior. ROA pp. 2074-2115. Barbara Seignious was a long time friend of Ms. Argoe and they knew each other through Church. ROA pp. 2038-2073. She also testified that Ms. Argoe was completely normal and never appeared to be a danger to herself or others. ROA pp. 2038-2073.

Ms. Argoe was eventually released from incarceration and involuntary commitment after a total of six (6) weeks. ROA p. 1995. As part of this malpractice case against Respondents, she retained three (3) expert witnesses, Dave Davis, M.D., Frank Quinn, Ph.D. and Lucinda Debruce, RN. ROA pp 1044-1239, 1386-1570 and 1240-1385. Each of these experts has extensive training in the fields psychiatry and psychologically and has worked in those fields for many years. ROA pp. 1044-1239, 1386-1570 and 1240-1385. Through affidavit and/or deposition, each opined that Respondents committed malpractice in their care and treatment of Ms. Argoe. ROA pp. 1044-1239, 1386-1570 and 1240-1385. More specifically, each testified that Respondents should not have continued to incarcerate Ms. Argoe through involuntary commitment and that nothing in the Probate Court proceedings dictated the standard of care or prohibited Respondents from releasing Ms. Argoe as the standard of care dictated. ROA pp. 1044-1239, 1386-1570 and 1240-1385.

ARGUMENTS

I. *RES JUDICATA* DOES NOT BAR MS. ARGOE'S CLAIMS AGAINST RESPONDENTS BECAUSE SHE HAS NEVER LITIGATED MEDICAL MALPRACTICE CLAIMS AGAINST ANY PARTY INCLUDING RESPONDENTS.

In its Order Granting Partial Summary Judgment in Favor of Defendants Three Rivers Behavioral Health, LLC, Phyllis Bryant-Mobley, MD and Cheryl C. Dodds, MD, the Circuit Court concluded Ms. Argoe's claims were "barred by *res judicata*." ROA p. 18. This was reversible error because the elements for application of *res judicata* simply weren't satisfied in this case. More specifically, Ms. Argoe has never litigated any claims against Respondents and she has never litigated a medical malpractice cause of action against any Defendant in either Argoe I or Argoe II. The Circuit Court's reliance on the doctrine *res judicata* is simply misplaced and wrong.

"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).None of these elements are satisfied in this case.

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, Respondents were not parties to the appeals in Argoe I or Argoe II. They neither briefed the issues to the Supreme Court nor argued

at oral arguments because they simply were not parties to those appeals. In fact, the claims against them were specifically stayed during those appeals.

In addition, Respondents 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. Argoe I involved claims that Ms. Argoe made against Attorney 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 Respondents for medical malpractice were never adjudicated or ruled on by the Supreme Court in Argoe I or 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. In fact, the case against Respondents was stayed while the Supreme Court addressed claims against other defendants. Additionally, Ms. Argoe never pursued medical malpractice claims against Respondents until after the Supreme Court's remand in Argoe I and Argoe II.

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, Respondents 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 Respondents. She has not sought to sue them twice. Rather, she seeks her day in court against them for the first time.

II. THE DOCTRINE OF QUASI JUDICIAL IMMUNITY DOES NOT APPLY TO THREE RIVERS, MOBLEY OR DODDS BECAUSE EACH OF THESE PROVIDERS HAD THE FULL POWER AND AUTHORITY TO DISCHARGE MS. ARGOE AT ANY TIME WITHOUT ANY COURT ORDER, COURT INTERVENTION OR COURT OVERSIGHT.

In its Order Granting Partial Summary Judgment in Favor of Defendants Three Rivers Behavioral Health, LLC, Phyllis Bryant-Mobley, MD and Cheryl C. Dodds, MD, the Circuit Court concluded these Respondents were entitled to summary judgment based on the doctrine of quasi-judicial immunity. In making this ruling, the Circuit Court committed reversible error because the decision as to when to release Ms. Argoe from involuntary commitment was a decision that these physicians and providers made in the course of their care and treatment. It was a decision based on clinical judgment (in this case poor judgment below the standard of care for reasonably prudent physicians) and it was a decision that once made, required no judicial approval, court order or judicial oversight at all. The error of the Circuit Court was treating a clinical, medical decision as a quasi-judicial act subject to 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. In Faile v. S.C. Department of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002), the Supreme Court explained that in determining 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.

To understand why the nature and function of Respondents' decision to detain Ms. Argoe was not a judicial act subject to protection under the doctrine of quasi-judicial immunity, it is helpful to understand South Carolina's involuntary commitment proceedings. The South

Carolina Code provides two (2) ways that a person may be involuntarily committed against their will. *See* S.C. Code Ann §44-17-410 and §44-17-510. The first is through an "emergency admission" pursuant to §44-17-410 and the second way is through a "judicial commitment" pursuant to §44-17-510. Each type of involuntary commitment requires certain procedural safeguards by the judicial system but involuntary commitment by "judicial commitment" has additional procedures not found in the statute for an "emergency commitment". After a person is involuntarily committed through an emergency admission pursuant to S.C. Code Ann. §44-17-410, the South Carolina Code mandates that the procedures for judicial commitment be followed and this includes a hearing before a Probate Judge.

What is critically important for purposes of this appeal is this: At no point during either an emergency admission commitment or a judicial commitment is a physician deprived of their ability to discharge an involuntarily committed patient who is no longer a danger to themselves or other people. A careful reading of South Carolina Code shows that the judicial safeguards outlined by the statutes do not prohibit a treating physician of an involuntarily committed patient from discharging that patient when they are no longer a danger to themselves or others. The decision by a medical provider as to when to discharge a patient from involuntary commitment always rests with that medical provider. The Probate Court may override that provider's decision to involuntarily commit a patient against their will but nothing in the South Carolina Code vests the Probate Court with the authority to mandate an involuntary commitment when a physician or other health care provider makes the clinical decision to discharge a patient. In short, the decision as to when to discharge Ms. Argoe was a clinical, medical decision made by physicians. It was not a judicial act or quasi-judicial act subject to quasi-judicial immunity.

As a matter of fact and as a matter of law, the two (2) Orders at issue in this case simply did not mandate that any medical provider hold Ms. Argoe against her will. The Probate Court's Order of Detention on June 6, 2005 provided only "That any officer of the peace take the person allegedly 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." The Order of Detention went no further. It did not mandate that the "licensed physician" detain Ms. Argoe for any period of time and the decision as to when to release Ms. Argoe required no court intervention or supervision because it was a matter left to the clinical judgment of the physician. Similarly, the Probate Court's Judgment and Order on June 21st, 2005, contained no language mandating that any physician or healthcare provider detain Ms. Argoe for a specific period of time or until further order of the Court. The reason for this was because the decision as to when to release an involuntarily committed patient rests with physicians not courts. In short, it is a medical decision and not a judicial decision.

Even one of Respondents' experts testified that the decision to keep or discharge Ms. Argoe was a clinical decision and that decision was not subject to any judicial intervention or oversight.

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. ………………………………………………………………………..

ROA pp. 2408- 2409.

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.

ROA pp. 2456-2458. Even Respondents' own expert freely admitted that the decision as to when to release Ms. Argoe was a clinical, medical decision. It was not a judicial act giving the physicians immunity under the doctrine of quasi-judicial immunity.

The Circuit Court's reliance on Vaughan v. McCloud Regional Medical Center, 372 S.C. 505, 642 S.E.2d 744 (2007), is misplaced. In Vaughan the plaintiff "brought [an] action against Repondents alleging, among other things, Dr. Wilson and Dr. Gallagher negligently and erroneously informed her and the Marlboro County Probate Court that Decedent was permanently incapacitated." The Court held 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." (emphasis added). The Court made clear, however, that such immunity applied only to "actions and opinions with the scope of the appointment." Despite Respondents' claims to the contrary, Ms. Argoe is not challenging the testimony or opinions given by Respondents in the Probate Court. She is challenging and alleging that the treatment they provided her was substandard and amounted to medical malpractice. That treatment included involuntary commitment and treatment with psychiatric medications that she did not want or need. But what is critical and important for this appeal is the fact that Respondents' ordered this care and treatment on their own without any Court

intervention or even any knowledge of the care and treatment being rendered to Ms. Argoe. 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, Respondents' 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 or quasi-judicial immunity.

The error in Circuit Court's reasoning can be further understood by considering the timeline of events in this case and comparing that timeline of events against the Circuit Court's order granting partial summary judgment. Once Ms. Argoe was transferred to Three Rivers, she was placed under the care of Mobley. Mobley was also one of the designated examiners and she testified at the June 21, 2005 hearing.[1] Shortly after the hearing, Mobley went on vacation and Ms. Argoe was then treated by Dodds and another psychiatrist, who was actually employed by Three Rivers, Charles Heath. ROA p. 1864. Neither Dodds nor Heath ever participated in any Court hearing. They never offered opinions in Court. They never offered any reports to the Probate Court. Dodds eventually released Ms. Argoe without any court approval or oversight whatsoever. Nonetheless, the Circuit Court's order grants summary judgment to two (2) providers who never performed any judicial act of any kind as it pertained to Martha Argoe. Such a holding by the Circuit Court was well beyond the scope of the Supreme Court's holding in Vaughn that limited application of quasi-judicial immunity to "actions and opinions within the scope of the appointment." In this case, there simply was no appointment at all for Dodds or Heath.

Respondents to this appeal ask this Court to convert the doctrine of quasi-judicial immunity into a doctrine of quasi-medical-malpractice-immunity because they seek protection

[1] Despite efforts, no one associated with this case or appeal has been able to find any record or recording of the June 21, 2005 Probate Court hearing.

from acts and omissions that were clinical in nature and were not judicial acts. Each of the Respondents to the Circuit Court's order granting partial summary judgment had a duty to release Ms. Argoe from involuntary commitment when she was no longer a danger to herself or others. But that duty arose not by operation of a judicial act or judicial mandate but instead by operation of the then prevailing standard of care of psychiatrists. It is for this reason that when Ms. Argoe was eventually released from involuntary commitment no court or tribunal played any role in that release. Accordingly, the act of releasing Ms. Argoe was not a quasi-judicial act entitling Defendants to immunity. Respectfully, the Circuit Court erred in holding it was and this Court should reverse the Circuit Court's order.

III. NOTHING IN THE PROBATE COURT ORDERS COMPELLED STEINER'S CARE AND TREATMENT OF MS. ARGOE OR REQUIRED HIM TO HOLD MS. ARGOE AGAINST HER WILL.

The Circuit Court granted summary judgment to Respondent Steiner "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." ROA pp. 10-11. The Circuit Court wrote: "The only evidence in this record is that all of Dr. Steiner's actions were undertaken pursuant to the Order [of the Probate Court]. He did not have the option to disregard the Order of the Probate Court." ROA p 8. However, even a cursory review of the Probate Court's Order of Detention shows that Steiner was under no legal obligation and he had complete legal authority to release Ms. Argoe. The Circuit Court erred in granting summary judgment to Steiner on this ground because the Probate Court's Order of Detention simply does not say what the Circuit Court assumed it said.

The Probate Court's Order of Detention provides: "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." When Dr. Steiner saw and treated Ms. Argoe that had already been done. Dr. Hooker had already seen and evaluated Ms. Argoe the day before Steiner saw and treated her. When Dr. Hooker saw Ms. Argoe, she was released and returned to her home the following day. By the time Steiner saw Ms. Argoe he was free to treat her and release her as he saw fit. The Probate Court's Order simply doesn't mandate that he do anything. Rather, Steiner made the clinical decision to detain Ms. Argoe for involuntary commitment but his judgment was a medical judgment (a poor medical judgment below the standard of care) and was not based on anything from the Probate Court.

One of Plaintiff's expert witnesses specifically testified that Steiner was free to release Ms. Argoe. 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.

ROA pp. 1066 - 1067. The decision to keep Ms. Argoe was a clinical, medical 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, medical assessment.

The Circuit Court incorrectly concluded that Steiner was compelled to keep Ms. Argoe against her will. Respectfully, this Court should reverse the Circuit Court on this point.

IV. MS. ARGOE PRESENTED MULTIPLE EXPERT WITNESSES WHO TESTIFIED THAT STEINER BREACHED THE STANDARD OF CARE AND THAT HIS BREACH OF THE STANDARD OF CARE RESULTED IN INJURIES TO MS. ARGOE.

As an additional ground for granting summary judgment to Steiner, the Circuit Court held: "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." This was an obvious and clear error because Ms. Argoe offered multiple expert witnesses. At least one of those experts offered specific opinions against Steiner and opined that Steiner's malpractice proximately caused injuries to Ms. Argoe.

In his deposition and in his sworn Affidavit, Dave Davis, M.D., could not have been clearer that 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.

ROA p. 1067.

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.

ROA p. 1079.

Instead of focusing on this testimony, the Circuit Court relied on other parts of Dr. Davis' testimony where he offered opinions about the other Respondents. More specifically, Dr. Davis testified that with regards to Dodds, he believed it was reasonable for her to wait a day or two to discharge Ms. Argoe, given that Ms. Argoe had already been involuntarily committed for a lengthy period of time and had already been evaluated by other psychiatrists. In Dr. Davis' opinion, it was reasonable for Dodds to defer to the physicians that went before her before immediately releasing Ms. Argoe. Unfortunately, the Circuit Court took this testimony about Dodds out of context and applied this testimony about one Defendant to another Defendant entirely. To be precise, the Circuit Court wrote: "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." 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 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 it, which was a breach in the standard of care according to Dr. Davis.

Contrary to the Circuit Court's holding, Ms. Argoe presented expert testimony on the standard of care, causation and damages. Accordingly, this Court should reserve the Circuit Court's Order granting summary judgment to Steiner on this ground.

V. THE CIRCUIT COURT ERRED IN GRANTING RESPONDENT BURRELL SUMMARY JUDGMENT ON THE THEORY OF QUISI-JUDICIAL IMMUNITY BECAUSE BURRELL ADMITTED SHE DID NOT PERFORM OR EVEN ATTEMPT TO PERFORM THE DUTIES ASSINGED TO HER BY THE PROBATE COURT.

In her Motion for Summary Judgment, Respondent, Doris Ann Burrell, claimed she was entitled to summary judgment because her only role in seeing and treating Ms. Argoe was that of a designated examiner, appointed by the Probate Court pursuant to S.C. Code Ann. §44-17-410 to determine if Ms. Argoe suffered from a mental illness that made her a danger to herself or others. The Circuit Court concluded that: "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." ROA p. 27. The problem with this reasoning is that Doris Ann Burrell candidly admitted at deposition that she never attempted to fulfill her role as a designated examiner.

The role for a Court appointed designated examiner is clear and is set forth by statute: A Court appointed examiner must determine if someone is suffering from a mental illness and

whether that mental illness makes that person a danger to themselves or other people. S.C. Code Ann. §44-17-410. In fact, the "Report of Designated Examiner for Mental Illness" completed by Respondent Burrell in this case asks whether Martha Argoe "IS MENTALLY ILL" and "NEEDS INVOLUNTARY TRATEMENT" because "There is a likelihood of serious harm to self or others.:" ROA pp. 1782-1783. But, repeatedly and consistently in her deposition, Respondent Burrell admitted she did not even attempt to follow the Probate Court's directive and determine if Ms. Argoe was a danger to herself or others because of a mental illness. Rather, she simply "follow[ed] doctor's orders" because she was "only a nurse" and she filled out the paperwork without reaching her own conclusions as she was directed to do by the Probate Court. ROA p. 1749.

On this point, Respondent Burrell's testimony was both stunning and revealing. According to Respondent Burrell: "I'm only a nurse [and] can [only] follow doctor's orders." ROA p. 1749. The problem is, Defendant Burrell's duties as a designated examiner are not to simply "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, Respondent Burrell stated that Ms. Argoe "is mentally ill" and that "[t]here is a likelihood of serious harm to self or others." ROA pp. 1782-1783. Respondent Burrell's testimony at deposition completely contradicted what she put into her Designated Examiner report to the Probate Court.

At deposition, Respondent 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.

ROA p. 1763.

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.

ROA pp. 1756 - 1757.

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.

ROA p. 1754.

Q: And you didn't believe at that time that she was a danger to herself or other people?

A: That's what – yes.

ROA p. 1748.

Respondent 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 Respondent 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, Respondent 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 Respondent Burrell is that the Probate Court's directive was for Respondent Burrell to present her own conclusions to the Probate Court. Respondent 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.

Respondent Burrell sought and received summary judgment based on quasi-judicial immunity for a judicial function which she admits she did not perform. Even the lower court "was troubled" by Respondent Burrell's total lack of regard for her judicial function but the lower court committed reversible error in granting Respondent Burrell summary judgment nonetheless. In the lower court's opinion: "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." ROA p. 30. With all due respect to the lower court, the remedy is clear: Respondent Burrell is not entitled to protection under the doctrine of quasi-judicial immunity when she didn't perform the task assigned to her by the Probate Court.

The lower court relied heavily on Vaughn v. McLeod Regional Medical Center, 372 S.C. 305, 642 S.E.744 (2007) in granting summary judgment to Respondent Burrell. According to the lower court: "The Vaughn case is directly on point regarding the claims alleged by Ms. Argoe versus Nurse Burrell." ROA p. 29. However, the lower court's reliance on Vaughn is misplaced because the Court in Vaughn makes clear that quasi-judicial immunity is only applicable to a "mental health practitioner" where that mental health practitioner has "acted in accordance with the governing statute." 372 S.C. at 512; 642 S.E.2d at 748. Respondent Burrell was not "act[ing] in accordance with the governing statute" when she declared Ms. Argoe to be danger to herself or others. Rather, by her own testimony she was "follow[ing] doctor's orders." ROA p. 1749. Unlike the Plaintiff in Vaughn who sued various healthcare providers for the opinions

they gave in the Probate Court regarding her sanity, Ms. Argoe's claim against Respondent Burrell isn't that she misdiagnosed Ms. Argoe. Rather, her claim against Respondent Burrell is that she did not perform any judicial function at all and instead opted to "follow doctor's orders" and go along with what she was told to her by others instead of following the Probate Court's directive for an independent examination.

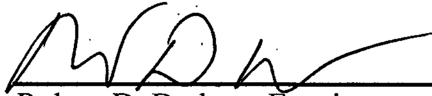
Respondent's argument that she is entitled to quasi-judicial immunity for a judicial act she simply did not perform is akin to a punter on a football team clamoring for a roughing-the-kicker call when the punter decides to tuck the ball and run and is subsequently tackled. As this Court is probably aware, a punter is not automatically entitled to a roughing-the-kicker call every time he is tackled. And, as the Supreme Court has held with regards to application of the doctrine of quasi-judicial immunity "the Court looks to the nature and function of the act" "as opposed to the actor". Faile, 350 S.C. at 324 ; 566 S.E.2d at 541. For purposes of this analogy, Burrell may have trotted onto the field as the punter but once she got onto the field she didn't punt the ball or attempt to punt the ball. Instead, she took the ball and ran with it by "following doctor's orders" instead of performing the role she was assigned to perform by the Court.

While "troubled" by Burrell's failure to perform her role as a designated examiner, the Circuit Court's Order granting Burrell summary judgment effectively rewards her misconduct by granting her immunity for a job she simply did not do. Respectfully, this Court should not continue to 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. Accordingly, this Court should reserve the Order of the trial court granting summary judgment to Burrell.

CONCLUSION

For the foregoing reasons, this Court should reverse the Orders of the Circuit Court granting Respondents summary judgment and should remand this case for trial.

Respectfully submitted,



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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,

CERTIFICATE OF COMPLIANCE

I certify that the Final Brief of Appellant and the Final Reply Brief of Appellant complies with Rule 211(b), SCACR and the April 15, 2014 Order of the South Carolina Supreme Court relating to personal data identifiers.

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THE STATE OF SOUTH CAROLINA

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v.

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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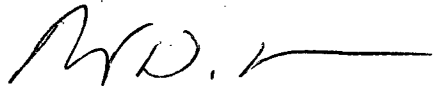
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Appellant** contains all material proposed to be included by any of the parties and not any other material.



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v.

Three Rivers Behavioral Health, LLC; Phyllis Bryan-Mobley, MD; David A. Steiner, MD; Cheryl C. Dodds, MD; Doris Ann Burrell, RN, Respondent,

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PROOF OF SERVICE

I certify that I have served the **Final Brief of Appellant** on all Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 20, 2015, addressed to their attorneys of record, listed below as:

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