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-32-1981
Appellate Case No.: 2014-001511

Martha Lewin Argoe,
.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENTS THREE RIVERS BEHAVIORAL HEALTH, LLC, AND DORIS ANN BURRELL, RN

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court correctly rely upon Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 710 S.E.2D 67 (2011) (Argoe II), when it found that Appellant cannot re-argue and/or re-litigate her attack of the underlying involuntary commitment proceedings because of res judicata and/or the law of the case?

2. Did the Circuit Court err when it found the doctrine of quasi-judicial immunity, as articulated in Vaughn v. McLeod Regional Medical Center, 372 S.C. 505, 642 S.E.2D 744 (2007), protected the Respondents in this Appeal from civil liability for their actions conducted on behalf of and under the oversight of the Probate Court up to and including the date when the Probate Court issued its Order for continued inpatient treatment of Appellant on June 21, 2005?

3. Did the Circuit Court err when it found that Nurse Burrell, the second court appointed designated examiner, is protected from civil liability in this matter pursuant to the doctrine of quasi-judicial Immunity?

STATEMENT OF THE FACTS

This case arises out of the involuntary commitment of Appellant Martha Lewin Argoe pursuant to a valid and proper commitment order issued by the Orangeburg County Probate Court on June 6, 2005. See Argoe v. Three Rivers Behavioral Health, LLC, et al., 392 S.C. 462, 710 S.E.2d 67 (2011) (Argoe II). {R.42; and see R.28, R.107 (duplicate at R.295)} This is the third time this matter has appeared in our appellate courts after various summary judgments were granted in the Circuit Court against Appellant arising from the same underlying involuntary commitment proceedings. {R.3, R.36-41, R.42-49} Appellant was involuntarily committed from approximately June 6 through July 20, 2005. {R.42-43} Respondents Three Rivers Behavioral Health, LLC, and Doris Ann Burrell herein supplement the concise recitation of the established background facts, which were set forth in the South Carolina Supreme Court's published opinion of Argoe II. {R.42-44}

This matter began when Appellant's late husband, George Lewis Argoe, Jr., filed an Application for Involuntary Emergency Hospitalization for Mental Illness with the Orangeburg County Probate Court on June 6, 2005. {R.3, R.13, R.24, R.142-143 (duplicates at R.297-298 & R.2572-2573; R.2073 & R.2115)} Appellant was admitted for involuntary emergency hospitalization at a facility in Aiken, South Carolina. {R.3, R.13-14, R.25, R.43, R.144-146} Appellant was transferred and admitted to Three Rivers Behavioral Health, LLC ("Three Rivers") on June 9, 2005. {R.4, R.14, R.25, R.103 (duplicates at R.366 & R.394)} "Based on [Appellant's] 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." Argoe II, 392 S.C. at 467, 710

S.E.2d at 70. {R.43; and see R.25} Four days later, on June 13, 2005, the Darlington County Probate Court[1] issued several orders that continued the involuntary commitment, appointed the designated examiners, and set a review hearing for June 21, 2005. {R.4, R.15, R.25, R.43, R.103-104 (duplicates at R.366-367 & R.394-395)} The Probate Judge found "that there was probable cause to continue the emergency detention" and set a follow-up hearing for June 21, 2005, at 9:15 am. {R.4, R.25, R.43, R.103-104 (duplicates at R.366-367 & R.394-395}

The Notification of Emergency Admission [and] Appointment of Designated Examiners dated June 13, 2005, states that a licensed physician and a second designated person "shall examine the person alleged to be mentally ill [and submit a] report ... 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." {R.103-104 (duplicates at R.366-367 & R.394-395)} Dr. Bryant-Mobley was appointed as the physician examiner and Nurse Burrell was appointed as the second examiner. {R.29, R.103 (duplicates at R.366 & R.394)} On June 14, 2005, the official Notice of Hearing, which hearing was set for June 21, 2005, and included the appointment of counsel, the guardian ad litem, and the designated examiners, was executed by the probate judge and served on Appellant and her attorney. {R.4, R.15, R.25, R.43, R.370-371} This Notice contains similar language that the licensed physician and second designated examiner "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." {R.371}

[1] The matter was transferred from Orangeburg County to Darlington County Probate Court.

Nurse Burrell met with Appellant on June 15, 2005, and subsequently issued her Report of Designated Examiner for Mental Illness. {R.1782-1783 (duplicate with additional handwritten comment by an unidentified reviewer of this document at R.1371-1372)} Dr. Mobley met with Appellant on June 16, 2005, and subsequently executed her independent Report of Designated Examiner for Mental Illness. {R.1943-1944 (duplicate at R.368-369)} These reports have check boxes and blank lines for the designated examiners to provide their input and opinions to the Probate Court regarding whether the patient is or is not in need of involuntary hospitalization. The Report of Designated Examiner for Mental Illness form report merely instructs the appointed examiner to "have examined the above-named person" and to "consider[ ] previous hospitalization records." {R.1782 (duplicate at R.1372), R.1943 (duplicate at R.368)} This language, as well as the above-quoted language from the Notification of Emergency Admission and appointment of the designated examiners, {R.103-104 (duplicates at R.366-367 & R.394-395), R.370-371} mirrors the general directions from S.C. Code Ann. § 44-17-530: "[T]he court shall appoint two designated examiners, one of whom must be a licensed physician, to examine the person and report to the court their findings as to the person's mental condition and need for treatment.... If the conclusions of the examination are that the person is mentally ill the underlying facts must be recorded as well as the conclusions."

"On June 21, 2005, the Probate Judge 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 the same day, the probate judge 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, 392 S.C. at 467, 710 S.E.2d at 70 (citation omitted). {R.43; and see R.4, R.15, R.26} In this order, the probate judge made the explicit findings by clear and convincing evidence that Appellant required further involuntary commitment "[b]ecause of her mental condition lacks sufficient insight or capacity to make responsible decisions with respect to her treatment AND [b]ecause of her condition, there is a likelihood of serious harm to [her]self or others." (emphasis in original) {R.106 (duplicates at R.372 & R.397); and see R.15} The Probate Judge also "retain[ed] jurisdiction over [Appellant through the twelve month out-patient treatment] to insure compliance with this Order." {R.106 (duplicates at R.372 & R.397); and see R.15}

Appellant ultimately and voluntarily consented to taking her prescribed medications beginning on or about June 16, 2005. {R.16} "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." Id. at 468, 710 S.E.2d at 70. {R.43; and see R.16, R.26} Dr. Dodds' discharge diagnosis was "**bipolar disease**, manic with **psychosis**." Id. (emphasis supplied by the Supreme Court). {R.43; and see R.16, R.26} The Circuit Court noted Appellant's clinical diagnosis did not substantially change during the course of her treatments. {See R.16, n.2.}

Soon after she completed her one-year of outpatient treatments, Appellant filed her first lawsuit challenging the involuntary commitment proceedings. {R.5, R.16, R.26, R.43-44} Appellant originally asserted numerous claims in her pleadings against various defendants, including her husband, her husband's attorney, the first Probate Judge that presided over the involuntary commitment proceedings, and the treatment providers at

the psychiatric facilities. {R.16, R.37; and see R. 108-147, R.262-284, R.439-543} Appellant's claims have been narrowed down to the single cause of action for medical malpractice negligence against the remaining defendants who are the Respondents in this appeal. {R.19, R.148-161}

STATEMENT OF THE CASE

Appellant commenced her litigation in Beaufort County on August 15, 2006 (C/A No. 2006-CP-07-2013). {R.16} The defendants in the first lawsuit were Appellant's husband and son, their attorney, a financial planner and institution, and the Orangeburg County Probate Judge.[2] The Beaufort County case was briefly removed to federal district court. Appellant filed a second lawsuit in Lexington County on June 6, 2007 (C/A No. 2007-CP-32-01981). {R.108-147} The second lawsuit asserted claims against various medical providers, two treatment facilities, and Appellant's insurance company.[3] {R.108-147}

The Beaufort action was subsequently consolidated into the Lexington action around September 6, 2007.

In addition to these claims, Appellant filed for divorce in Orangeburg County on August 15, 2006 (2006-CR-38-904).

Appellant also attempted to collaterally attack the original Commitment Order {R.285-308} in an untimely petition to the Dorchester County Probate Court (2006-GC-

[2] The original lawsuit was filed in Beaufort County because that was the county of residence of Appellant's son, Mr. Walsh, her husband's and son's attorney, and the real property that was a subject in the action.

[3] The second action was filed in Lexington County because it is the county of residence of Three Rivers, the facility where Appellant received most of her treatment.

10-00053), which the Probate Court denied August 25, 2008, {R.45, R.91-98} and a subsequent appeal of the same issue to the Dorchester County Circuit Court, which Circuit Court denied August 18, 2009.[4] {R.45, R. 55-71}

Later, the Supreme Court held that "[b]ecause [the Circuit Court] Judge['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." Argoe II, 392 S.C. at 471, 710 S.E.2d at 72. {R.45}

Various defendants filed summary judgment motions based on Appellant's original and first amended complaint. Appellant appealed the grant of these summary judgment motions against her, which resulted in two separate, published appeals that were decided directly by the Supreme Court: 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 Appellant and the attorney for Appellant's husband and son, where the son held Appellant's durable power of attorney); {R.36-41} and 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 successor owner of the Three Rivers facility). {R.42-49}

The case was stayed from approximately February 19, 2010 through May 31, 2011, pending the resolution of the first two appeals. After the conclusion of the first two appeals, and following a status conference with the administrative judge for the Eleventh Circuit, Appellant filed for leave to file a Second Amended Complaint on November 1,

[4] The Circuit Court order denying the appeal from Probate Court was not actually filed until January 5, 2010.

2011. {R.262-284} Although Appellant's proposed amended pleading mostly clarified and consolidated her claims into a single claim for medical malpractice negligence, the parties objected to some of the proposed revised allegations in light of the prior published appellate decisions in this case. {R.439-543} Following a hearing, Appellant was granted leave to file her Second Amended Complaint with some revisions to the draft pleading. {R.50-54} On January 6, 2012, Appellant filed her Second Amended Complaint that alleged the sole cause of action for medical malpractice negligence. {R.148-161}

All of the then-named defendants filed motions for summary judgment around the end of 2012 and beginning of 2013. {R.212-214 & R.327-334 (Dr. Steiner); R.219-222 & R.313-326 (Three Rivers & Nurse Burrell); R.223-227 (Dr. Dodds); R.309-312 & R.335-413 (Dr. Bryant Mobley)} Prior to the hearing on the motions, Appellant dismissed or agreed to dismiss all but the five current Respondents to this appeal. {R.2565-2566 (Aiken Regional Medical Center, Inc.); R.2567-2569 (Carolina Care Plan, Inc.); R.2570-2571 (Psychiatric Solutions, Inc.)} Summary judgment was argued before the Circuit Court on August 29, 2013. The circuit judge requested further briefing in an e-mail sent around October 4, 2013. {R.2580-2586} After reviewing the supplemental briefing, {R.564-584} the circuit judge issued three separate orders: (1) an order granting partial summary judgment in favor of Respondents Three Rivers, Dr. Mobley, and Dr. Dodds (filed March 7, 2014) {R.12-23 (duplicate at R.2591-2602)}; (2) an Order granting summary judgment as to Respondent Dr. Steiner (filed March 21, 2014) {R.1-11 (duplicate at R.2603-2613)}; and (3) an order granting summary judgment as to Respondent Nurse Burrell (filed March 21, 2014). {R.24-31 (duplicate at R.2620-2627)} Appellant filed her motion to reconsider the grant of partial summary judgment on March

24, 2014, {R.246-256} and filed separate motions to reconsider the grants of summary judgment in favor of Dr. Dodds {R.228-236} and Nurse Burrell {R.239-245} on April 7, 2014. After receiving further submittals from the parties, {R.544-550, R.551-563} the circuit judge denied all of Appellant's motions to reconsider and affirmed his prior orders on June 9, 2014. {R.32-35 (duplicate at R.2614-2619)}

Appellant filed her Notice of Appeal around July 1, 2014. {R.2587-2627} She filed an Amended Notice of Appeal on July 15, 2014, to correct the caption and reflect that the currently named Respondents are the only defendant parties left in the case. {R.2626-2631}

This appeal follows.

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, 558, 671 S.E.2d 79, 85 (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." Rule 56(c), SCRCP; 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, 316 S.C. 263, 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 by 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).

LAW/ANALYSIS

I. The South Carolina Supreme Court Already Found that Appellant's Continued Attempts to Challenge the Underlying Involuntary Commitment Proceedings are Barred by Res Judicata and/or are the Law of the Case.

The Supreme Court already determined that because the original commitment proceedings were already adjudicated as compliant and proper by both the Probate Court and on final review by the Dorchester County Circuit Court "the doctrine of res judicata precludes Appellant from asserting any challenge to the commitment orders." Argoe II, 392 S.C. at 471, 710 S.E.2d at 72.[5] {R.45} Likewise, the Supreme Court already determined that Three Rivers and the subsequent owner of the same facility, Psychiatric Solutions, should be considered one and the same under the facts of the case.[6]

Appellant's sole cause of action asserted in her Second Amended Complaint is for medical malpractice negligence. The Second Amended Complaint is more concise in its allegations than the hodge-podge of claims asserted by Appellant prior to the Argoe I and Argoe II decisions. Nonetheless, the underlying themes and alleged facts in each of Appellant's complaints remain constant: Appellant believes that she should never have been involuntary committed and seeks redress against the mental health providers and the treatment facility to which she was committed by order of the Probate Court.

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[5] In fact, "Appellant's counsel [already] conceded the validity of the initial commitment orders" in a previous appeal. See Argoe II, 392 S.C. at 472 n.8, 710 S.E.2d at 72 n.8. {R.48,n.8}

[6] The opening sentence in the Argoe II opinion establishes this fact: "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." 392 S.C. at 465-466, 710 S.E.2d at 69. {R.42] Psychiatric Solutions admitted it was the successor to Three Rivers in its answer to Appellant's Second Amended Complaint. {R.192 ¶ 2} In fact, the Supreme Court uses the term "Three Rivers" throughout the Argoe II opinion to reference the treatment facility generally and makes no distinction based on the ownership of the facility.

"Under the doctrine of res judicata, a final judgment on the merits in a prior action will conclude 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." Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 190-191, 427 S.E.2d 918, 919 (Ct. App. 1993) (citation omitted). Res judicata is "[a]n issue that has been definitively settled by judicial decision." Black's Law Dictionary, p. 1312 (7th ed. 1999). "To establish res judicata, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992) (citation omitted); accord Black's, p. 1312 (citing Restatement (Second) of Judgments §§ 17, 24 (1982) ("The three essential elements [of res judicata] are (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties.")).

Appellant argues the fiction that the decisions rendered in the prior appeals in this case are completely unrelated to the present appeal. On the contrary, the common subject of each appeal is the application and implication of the involuntary commitment of Appellant. While the names on the prior summary judgment motions may differ, the underlying facts, the underlying subject matter, and the parties involved in the involuntary commitment of Appellant are the same or are in privity. If the Appellant is correct that the current claim for medical malpractice negligence has no relationship whatsoever to the rest of the history of this case, then she asserted a brand new cause of action in her Second Amended Complaint and this court should remand this case to the Circuit Court with directions to dismiss all of Appellant's claims based on the running of

the statute of limitations.[7] But this position by Appellant is different from the one taken previously by her and by the Circuit Court when Appellant was granted leave to file her Second Amended Complaint. Leave was granted because Appellant argued the revised pleading merely reworded the previously articulated claims into a concise and re-titled cause of action. Stated another way, all of these matters and the former appeals are interrelated.

The Supreme Court already held that Appellant cannot re-litigate the involuntary commitment proceedings. That ruling is the law of the case. J. Toal, et al., Appellate Practice in South Carolina 81 (2d ed. 2002) ("[A] finding by the appellate court contained in a decision in a previous appeal in the same case is the law of the case." (citations omitted)). "Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form." Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (citing 5 C.J.S. Appeal and Error § 975(a) (1993)). However, if the terminology used by the Supreme

[7] Appellant was involuntarily committed around June 6, 2005, and was subsequently discharged from Three Rivers on July 20, 2005. At the latest, the statute of limitations would start to run on July 20, 2005, when Appellant was discharged from Three Rivers. The statute of limitations for medical malpractice claims is three years and the statute of repose is six years. S.C. Code Ann § 15-3-345. Appellant filed her Second Amended Complaint on January 6, 2012, which is approximately six years and twenty-five weeks after her cause of action accrued. In the interim, there were two appeals. The first notice of appeal was filed on September 10, 2008, which was finalized with the published opinion of Argoe I on Sept. 2, 2010. Appellant filed her second appeal arising from a grant of summary judgment in favor of Psychiatric Solutions, the successor owner of Three Rivers, on February 19, 2010, which was finalized with the published opinion of Argoe II on May 31, 2011. The first appeal was filed three years and fifty-two days after Appellant was discharged from Three Rivers. Even if the entire time from September 10, 2008, through May 31, 2011, is removed from the equation because of possible tolling, which is when the first two appeals of this case were active, Appellant did not file her Second Amended Complaint for a net three years and two hundred seventy-three days after she was discharged from Three Rivers.

Court is the issue, then pursuant to Rule 220(c), SCACR, Appellant alternatively is collaterally estopped from re-litigating the involuntary commitment proceedings. See Sims v. Amisub of South Carolina, Inc., 408 S.C. 202, 209, 758 S.E.2d 187, 191 (Ct. App. 2014) ("Under South Carolina Law, collateral 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." (internal quotation and citation omitted))

The involuntary commitment proceedings and the conduct of the parties at the last hearing before the Probate Judge on June 21, 2005, were proper. Regardless how Appellant now tries to argue her case, the Probate Court was explicitly involved in and provided judicial oversight of the involuntary commitment proceedings up to the time when the Probate Court issued its final order for continued inpatient treatment on June 21, 2005. See Argoe II, 392 S.C. at 467, 710 S.E.2d at 70. {R.43} Although the probate judge issued no additional orders, the Probate Court actually retained jurisdiction over Appellant pursuant to S.C. Code § 44-17-580(B). In the context of the prior proceedings involving Appellant, the circuit judge correctly upheld the mandate from the Supreme Court in Argoe II and found Appellant cannot try to re-litigate the involuntary commitment proceedings that were reviewed by the Probate Court.

II. The Circuit Court Properly Found the Respondents to this Appeal are Protected by the Doctrine of Quasi-Judicial Immunity for Any Activities Conducted Up to and Including the Final Probate Court Hearing and Subsequent Order that was Issued on June 21, 2005, as Expressed in Vaughn v. McLeod Regional Medical Center, 372 S.C. 505, 642 S.E.2d 744 (2007).

The involuntary commitment of Appellant started with a valid court order. That fact is established and cannot be challenged anew. All future treatments of Appellant

came as a result of this valid court order. Three Rivers did not provide treatment to Appellant, it was merely the facility where Appellant's physicians directed the care and treatment of their patient.[8] The Respondent physicians, however, were acting pursuant to the valid court order for involuntary commitment and the subsequent order for continued commitment. At the very least, the treating physicians were explicitly or implicitly complying with the commitment orders under the oversight of the Probate Court. Indeed, had the probate judge determined the testimony from the designated examiners, testimony from Appellant's family members, its review of the medical records, and cross examination by Appellant's attorney at the hearing on June 21, 2005, did not warrant further inpatient treatment, he would not have included it in his order. The Supreme Court reviewed these same arguments by Appellant and noted it "disagree[s] with Appellant's assertion that her involuntary commitment was without a factual basis." Argoe II, 392 S.C. at 471, 710 S.E.2d at 72. {R.45} Appellant cannot attempt to create an issue of fact using after-the-fact documents "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." Id. at 472, 710 S.E.2d at 73. {R.46}

Appellant argues that none of the Respondents are entitled to qualified-judicial immunity because the final decision when to discharge a properly committed involuntary patient is generally left to the treating physicians. Appellant essentially argues the

[8] Any attempt by Appellant to argue vicarious liability in this appeal is improper. Appellant sued only one employee at Three Rivers: Nurse Burrell. In fact, Nurse Burrell was a designated examiner and she did not participate in Appellant's clinical treatment. Furthermore, the question of vicarious liability was never properly raised to or ruled on by the Circuit Court.

Probate Court is no longer involved after the treating physicians get involved. This argument is not legally or factually correct and it completely ignores the circuit judge's grant of **partial** summary judgment in favor of Dr. Mobley, Dr. Dodds, and Three Rivers. Although Respondents certainly argued for it, the Circuit Judge did not dismiss the entire claim asserted by Appellant in her Second Amended Complaint. Rather, he limited his ruling to the period of time that the Probate Court was clearly still involved in the involuntary commitment proceedings as well as the time after the Respondents were no longer involved in Appellant's care. Appellant only appeals the first part of the Circuit Court's limited ruling when the Probate Court was still directly involved in the involuntary commitment proceedings.

On June 21, 2005, the Probate Court found by clear and convincing evidence that Appellant was a potential danger to herself and/or others and that she did not fully understand her situation, thus requiring continued inpatient treatment. {R.106 (duplicate at R.372 & R.397)} This finding was made while the probate judge still was directly involved in the commitment proceedings. Physicians and mental health facilities acting within the scope of judicial directives in an involuntary commitment setting are entitled to the grant of absolute, quasi-judicial immunity. Vaughn, 372 S.C. at 512, 642 S.E.2d at 748. That is, "[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.")). Here, the Probate Court was directly involved with and oversaw the involuntary commitment of the Appellant. The probate judge conducted a

hearing on June 21, 2005, for the express purpose to review the care and treatment of Appellant and determine whether Appellant required further inpatient care. The Probate Judge found that Appellant required additional inpatient care and issued an order confirming these findings. This order cannot now be challenged, as explained in Argoe II. In this light, the circuit judge limited his ruling to a grant of **partial** summary judgment for all portions of Appellant's treatments up to and including the date that the Probate Court issued its last official order in the case. The Supreme Court has ruled. The Circuit Court order granting partial summary judgment to Respondents should be affirmed.

III. Nurse Burrell is Protected from Civil Liability Under the Doctrine of Quasi-Judicial Immunity.

Nurse Burrell's only involvement with Appellant was as the second, non-physician designated examiner appointed by the Probate Court. {R.25-26, R.43, R.103 (duplicates at R.366 & R.394); R.2576-2577} Yet Appellant argues as if Nurse Burrell was part of Appellant's treatment team and presents the unsupported allegation that Nurse Burrell did not perform the duties of a designated examiner. If Nurse Burrell did not perform her duties as the designated examiner, which claim is denied and wholly unsupported by the facts in this case, then Appellant should have raised this criticism to the probate judge at the hearing that was conducted on June 21, 2005, not more than eight years later, for the first time, at a summary judgment hearing. This accusation is untimely and is not supported by the law or the facts in this case.

The case at bar is a medical malpractice action. 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). "Specifically, a plaintiff alleging medical malpractice must provide evidence showing (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 v. McLeod Regional Medical Center, 367 S.C. 242, 247-248, 626 S.E.2d 1, 4 (2006) (citations omitted). "Also, 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." Id. at 248, 626 S.E.2d at 4 (citations omitted). "The plaintiff must prove 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." Id.

Appellant's experts offer no specifics regarding the standard of care for a designated examiner in South Carolina. In fact, Nurse Burrell is the **only** witness who testified about the tasks the second, non-physician designated examiner should complete. The involuntary commitment statutes and paperwork provide little guidance and merely state that the designated examiner must meet with the patient, review the medical records, and provide a written report with some explanations to the Probate Court. See {R.103 (duplicates at R.366 & R.394), R.1782-1783 (duplicate with additional handwritten comment by an unidentified reviewer of this document at R.1371-1372}; S.C. Code § 44-17-530. Nurse Burrell complied with these statutory requirements. She testified that prior to filling out the Report of Designated Examiner for Mental Illness, "I have read

[Appellant'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." {R.511-563; 1738, lines 2-8; R.1774, ln.2—R.1778, ln.1; R.1765, ln.4—R.1766, ln.9} Nurse Burrell explained 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." {R.1759, lines 12-18}

Even if Appellant disagrees with Nurse Burrell, Appellant failed to provide sufficient support to counter her testimony. Appellant's experts give only conclusory opinions that Nurse Burrell did not perform the duties of a designated examiner. "Regardless of the area in which the prospective expert witness practices, he must set forth the applicable standard of care for the medical procedure under scrutiny and he must demonstrate to the court that he is familiar with the standard of care." David, 367 S.C. at 250, 626 S.E.2d at 5. "[I]f the expert merely testifies as to his own **personal** standard of care, rather than the generally recognized and accepted standard of care, such testimony is insufficient to survive summary judgment." Melton v. Medtronic, Inc., 389 S.C. 641, 655, 698 S.E.2d 886, 893 (Ct. App. 2010) (emphasis in original). Appellant's experts further admit that they have absolutely no basis for providing testimony regarding the standard of care of a designated examiner in South Carolina, to wit:

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.

{R.1256, lines 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.

{R.1258, lines 3-8}

Q. You don't know what the requirements for the designated examiner are, correct, in South Carolina?

A. No.

{R.1148, lines 19-22}

Appellant's criticism of Nurse Burrell is based on her disagreement with the result of the June 21, 2005, hearing before the probate judge. Appellant glosses over the fact Nurse Burrell was appointed as a designated examiner and that she appeared before the probate judge in this capacity at the hearing on June 21, 2005. There is no indication in the record Appellant or her attorney complained at the hearing that Nurse Burrell failed to comply with her designated examiner duties. There is also no evidence in the record the probate judge criticized Nurse Burrell's designated examiner's report. In any event,

Argoe II prevents Appellant from re-trying this issue now. Again, "[m]atters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form." Ackerman, 324 S.C. at 443, 477 S.E.2d at 268 (citation omitted).

Nurse Burrell is entitled to quasi-judicial immunity as articulated in Vaughn. She clearly fits all of the elements set forth in the case and, as explained above, Appellant has presented no credible evidence to refute that Nurse Burrell was an appointed designated examiner who reviewed the file materials, met with Appellant, and reported these findings to the probate judge at the hearing on June 21, 2005. Appellant's dissatisfaction with the results of this hearing does not create liability or void the grant of immunity 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 ... proceedings." Vaughn, 372 S.C. at 512, 642 S.E.2d at 748. Nurse Burrell is entitled to quasi-judicial immunity for her role in the involuntary commitment proceedings. The reason is articulated by the Supreme Court when it explained why a court appointed guardian ad litem is entitled to immunity:

> 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.

Id. at 511-12, 642 S.E.2d at 748 (citation omitted).

Of all of the respondents in the instant Appeal, Nurse Burrell is most clearly entitled to the quasi-judicial immunity discussed in Vaughn. Nurse Burrell was appointed as a designated examiner. Her **only** involvement with Appellant was in her capacity as the second designated examiner. She presented her designated examiner's report to the Probate Judge at the hearing on June 21, 2005. Nurse Burrell's participation in the matter ended when the Probate Court issued its order for continued commitment on June 21, 2005. The Supreme Court in Argoe II already ruled that Appellant cannot challenge these involuntary commitment proceedings. Nurse Burrell is entitled to quasi-judicial immunity as a matter of law. The Circuit Court's order granting summary judgment in favor of Nurse Burrell should be affirmed.

CONCLUSION

For the foregoing reasons, as well as for the reasons articulated by the other respondents in the instant appeal, Respondents Three Rivers Behavioral Health, LLC and Doris Ann Burrell, respectfully request this Honorable Court affirm the prior holdings of the Supreme Court, affirm the grant of partial summary judgment in favor of Respondent Three Rivers Behavioral Health, LLC, and affirm the grant of summary judgment in favor of Respondent Doris Ann Burrell, RN. Respondents invite disposition of this case via Rule 220(b)(2), SCACR.

Respectfully submitted,

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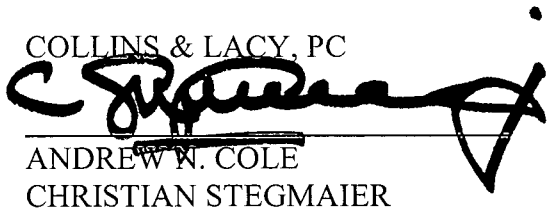

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May 12, 2015
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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2007-CP-32-01981

Appellate Case No. 2014-001511

Martha Lewin Argoe, Appellant,

v.

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

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that the Final Brief complies with the provisions of Rule 211(b), SCACR.

/Signature page attached

Respectfully submitted,

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May 12, 2015

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 12th day of May 2015, a copy of the foregoing Final Brief of Respondents Three Rivers Behavioral Health, LLC, and Doris Ann Burrell, RN, was served by depositing said copy in the US Mail, with sufficient first class postage, on the following counsel at the addresses listed below.

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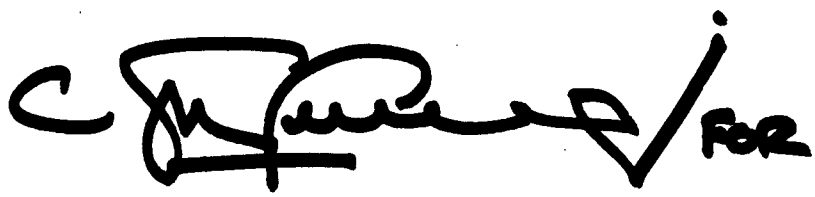

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