

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Christy Byrd, as Next Friend of Julia
B. a minor,

Plaintiff,

Versus

McLeod Physician Associates II and Dr.
John B. Browning,

Defendants

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

C/A No. 2013-CP-21-00690

ORDER DENYING PLAINTIFF'S

MOTION FOR NEW TRIAL

ABSOLUTE AND/OR JUDGMENT

NOTWITHSTANDING THE

VERDICT

JUL 29 2016

SC Court of Appeals

RECEIVED
JUL 14 2016
BY:.....

FILED
JUL 11 PM 4:14
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter is before the Court on a Motion for New Trial Absolute and/or Judgment notwithstanding the Verdict filed by Plaintiff Christy Byrd, as Next Friend of Julia B. a minor. This is a medical malpractice action arising out of the labor and delivery of Julia B. on October 8, 2009, in which Plaintiff alleges that Julia B. sustained permanent right brachial plexus nerve injuries as a result of alleged acts or omissions of the attending physician, Dr. John B. Browning of McLeod Physician Associates II. The first trial of this case was held from September 22-25, 2015, which resulted in a mistrial being declared on September 25, 2015, after improper testimony was offered in the presence of the jury during the direct examination by Plaintiff's expert rebuttal witness, Dr. Daniel Strickland. This case was tried again before the Court from May 16-20, 2016 resulting in a jury verdict in favor of Defendants McLeod Physician Associates II and Dr. John B. Browning. In utilizing the verdict form, the jury found the Defendants proved by a greater weight or preponderance of the evidence that the facts of this case arose of a genuine emergency situation where the patient was not medically stable and there was an immediate threat of death or serious bodily injury. The jury then found Dr. John B. Browning did not act in a manner that was grossly negligent.

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Clerk of Court, C.P. & G.S.
FLORENCE COUNTY, S.C.
Linda Speltz

On May 31, 2016, Plaintiff timely filed a Motion for New Trial Absolute and/or Judgment notwithstanding the Verdict. On June 10, 2016, Defendants timely submitted a Response in Opposition to Plaintiff's Motion for New Trial and/or Judgment notwithstanding the Verdict. After careful consideration of the parties' respective written submissions and applicable law and for the reasons stated herein, Plaintiff's Motion for New Trial Absolute and/or Judgment notwithstanding the Verdict is DENIED.

The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Krepps by Krepps v. Ausen, 324 S.C. 597, 608, 479 S.E.2d 290, 296 (Ct. App. 1996); Umhoefer v. Bollinger, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct. App. 1989). In reviewing a motion for judgment notwithstanding the verdict, the court views the evidence and inferences that reasonably can be drawn therefrom in the light most favorable to the non-moving party. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). The trial court must deny a motion for judgment notwithstanding the verdict if the evidence yields more than one reasonable inference or its inference is in doubt. Id.; Strange v. S.C. Dept. of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994).

Plaintiff moves for a New Trial Absolute and/or Judgment notwithstanding the Verdict on the basis that the Court erred in failing to find that the Obstetrical Medical Emergency Exception (S.C. Code Ann. § 15-32-230) did not apply as a matter of law and that the Court erred in failing to find that the proper Defendant or employer of Dr. Browning in this case was McLeod Physician Associates, Inc., a

for-profit entity, instead of McLeod Physician Associates II, a 501(c)(3) charitable institution.

As an initial matter, the Court finds there was sufficient evidence in the record that the Obstetrical Medical Emergency Exception applied to this case and that the Defendants presented sufficient evidence at trial as to each element of the Obstetrical Medical Emergency Exception in pleading the statute as an affirmative defense. Specifically, there was sufficient evidence in the record establishing that shoulder dystocia constitutes a genuine emergency situation, that the patient was not medically stable, and that there was an immediate threat of death or serious bodily injury. While there was a dispute between the expert witnesses for both Plaintiff and the Defendants as to implications of Julia B. medical condition at the time of delivery, there was sufficient evidence presented for the jury to decide, on proper instructions from the Court, whether the Obstetrical Medical Emergency Exception applied. Accordingly, the Court denied Plaintiff's request that the Obstetrical Medical Emergency Exception did not apply as a matter of law and instructed the jury on the applicable provisions of the Obstetrical Medical Emergency Exception in its charge and incorporated the applicable provisions into the verdict form.

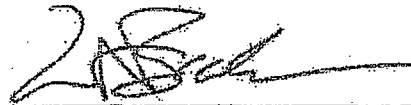
The Court also finds that sufficient evidence was presented at trial that Dr. John B. Browning was employed by McLeod Physician Associates II, a 501(c)(3) charitable institution, at the time of the delivery of Julia B. The Court heard testimony from Saunders M. Bridges, Jr., personal counsel for McLeod Physician Associates II, who discussed the formation of the entity as a 501(c)(3) charitable institution and that it was the entity that employed Dr. Browning at the time of the

delivery of Julia B. on October 8, 2009. In addition to the testimony offered by Mr. Bridges, the Court also considered the documentation provided by the Defendants and Mr. Bridges in finding that sufficient evidence was presented that Dr. Browning was employed by McLeod Physician Associates II at the time of the delivery of Julia B.

CONCLUSION

Accordingly, for the reasons stated herein and after careful consideration of the parties' respective written submission and applicable law, it is **HEREBY ORDERED** that Plaintiff's Motion for New Trial Absolute and/or Judgment notwithstanding the Verdict is **DENIED**.

IT IS SO ORDERED.



Judge William H. Seals, Jr.
Presiding Judge, 12th Judicial Circuit

6/26, 2016
Marion, South Carolina

CONNIE REEL-SHEARMAN
CCCP & GS
FLORENCE COUNTY, SC

2016 JUL 11 PM 4:12

FILED

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Carina M. Stephens
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-21-00690

Christy Byrd, as Next Friend of Julia B. a
minor,

McLeod Physician Associates II and Dr.
John B. Browning,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Molly H. Craig (SC #6960)
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC 29401

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other.
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other.
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other.

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of July, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 12 day of July, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Ed. Graham
P.O. Box 550
Florence, S.C. 29503
ATTORNEY(S) FOR THE PLAINTIFF(S)

Molly Craig
172 meeting St.
Charleston, S.C. 29401
ATTORNEY(S) FOR THE DEFENDANT(S)
Orlando L. Shear
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

Christy Byrd, as Next Friend of Julia B. , a
minor,

CASE NO.
2013-CP-21-00690

☐ Plaintiff(s),

MOTION INFORMATION FORM AND COVER
SHEET

Versus:

McLeod Physician Associates II,

☒ Defendant(s).

check box above indicating submitting party

Plaintiff's attorney: Edward L. Graham, Esquire Diane M. Rodriguez, Esquire Graham Law Firm, P.A. Post Office Box 550 Florence, SC 29503 P: 843-662-3281; F: 843-665-0254		Defendant's attorney: Molly H. Craig (SC #6960) Ellore A. Ganes (SC #70509) HOOD LAW FIRM, LLC 172 Meeting Street/P.O. Box 1508 Charleston, SC 29402 P: 843-577-4435/F: 843-722-1630	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)			
SECTION I: Hearing Information			
Nature of Motion:		Court Reporter Needed: YES ☐ / NO ☐	
Estimated Time Needed:		SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order - I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted: <u>July 23, 2016</u>	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status: ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE: _____	
☐ Other: _____		DATE: _____	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		DATE FILED	
☐ MOTION FEE COLLECTED: _____		FILED JUL 23 11 PM 4:13 CLERK OF COURT C.P. & G.S. FLORENCE COUNTY, S.C. <i>Christy Byrd</i>	
☐ CONTESTED-AMOUNT DUE: _____			

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