

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Florence County
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

C.A. No. 2013-CP-21-00587
App. No. 2015-001237
Ct. App. Opinion No. 2017-UP-265 – Filed June 28, 2017

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SC Court of Appeals

Genesie Fulton, individually, and as Next Friend of
Bryson F., a minor,

Appellants,

v.

L. William Goldstein, M.D., individually and d/b/a
L. William Goldstein OB-GYN,

Respondents.

Return to Petition for Rehearing

This Court has issued an unpublished opinion affirming the judgment entered in favor of the Respondents on the jury's verdict. Herein the Respondents submit this Return to the Appellant's petition for rehearing.

In this medical malpractice case, Genesie Fulton brought this action in her individual capacity and on behalf of her minor son, seeking damages for a permanent brachial plexus nerve injury that the Infant suffered during delivery based on allegations that her Obstetrician, Dr. William Goldstein failed to properly manage and resolve a condition of shoulder dystocia which occurred during his delivery. Dr. Goldstein denied the negligence allegations and asserted the limitation on liability found in the Emergency Medical Obstetrical Care Exception found in S.C.

Code Ann. §15-32-230, which requires proof of gross negligence to impose liability on an obstetrician for treatment rendered during labor and delivery where there is a genuine emergency situation involving an immediate threat of death or serious bodily injury and the patient is not medically stable.

The Appellants moved for a directed verdict on the grounds that the Respondents had not presented sufficient evidence that the patient was not medically stable to support a jury issue on the obstetrical emergency statute. However, the Trial Court denied the motion and charged the jury on the statutory exception which included a definition of gross negligence as “failure to exercise even the slightest care” and “failure to exercise even a slight degree of care.” The jury returned a verdict for Dr. Goldstein, making a specific finding that “the facts of this care arise out of a genuine emergency situation where the patient is not stable and there is an immediate threat of death. The jury further found that the Plaintiffs had not proven that Dr. Goldstein was grossly negligent.

Appellants argue on appeal that the trial court erred in (1) not finding as a matter of law the obstetric emergency statute was inapplicable to this case and (2) not charging the jury on the correct and complete definition of gross negligence. This Court properly affirmed and the petition for rehearing should be denied.

First, the Trial Court properly charged the jury on the obstetrical emergency statute based on the concessions made and the evidence presented: (1) the Plaintiff conceded, and experts testified, that the presentation of shoulder dystocia constituted “a genuine emergency situation;” (2) the Plaintiff conceded, and experts testified, that the Infant was “in immediate threat of death” or “in immediate threat of serious bodily injury;¹” and (3) there was disputed medical

¹ As an additional reason on this point, the Appellants did not raise this point in its motion. They

evidence in the expert testimony from which the jury could find that the Infant's condition was "not medically stable."

Second, the Trial Court charged the jury on a correct definition of gross negligence. Gross negligence has been defined as "failure to exercise even a slight degree of care." Anderson v. Ballenger, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932); Hollins v. Richland Cty. Sch. Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993). The Appellants complain that the Trial Court did not add language that gross negligence is "the absence of care that is necessary under the circumstances."² The jury charge was substantially correct and covered the law; therefore, it does not require reversal. Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000); Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Cmty., Inc., 397 S.C. 348, 362, 725 S.E.2d 112, 120 (Ct. App. 2012); *see also* Martin v. Columbia Elec. St. Ry., Light & Power Co., 84 S.C. 568, 66 S.E. 993, 994 (1910) (no error to refuse to read party's request to charge where point was covered in general instructions).

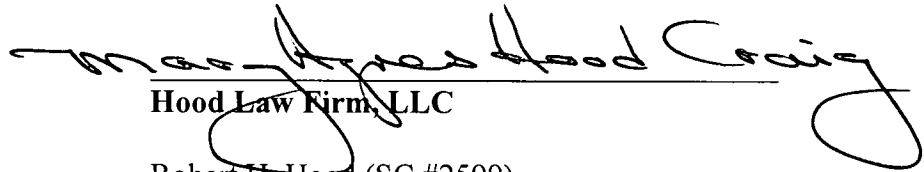
CONCLUSION

WHEREFORE, based on the foregoing, the Respondents respectfully submit that the Court properly affirmed the judgment on the jury's verdict, and the Petition for Rehearing should be denied.

only argued the "not medically stable" point: "Your Honor, we take exception to their request for inclusion of the Obstetrical Emergency Statute. It is inapplicable as a matter of law to this case based on one of the exceptions included. They have offered zero testimony that [the Infant] was medically unstable in this case." [ROA 838:10-15. See also ROA 841. 909.]

² Respondents maintain, in the alternative, that this issue was abandoned when the Appellants did not raise any challenge to the same definition of gross negligence on the verdict form. *See* Maus v. Pickens Sentinel Co., 258 S.C. 6, 186 S.E.2d 809 (1972) (objection to jury charge is waived where it is not argued in brief).

Respectfully submitted,


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Attorneys for Respondents

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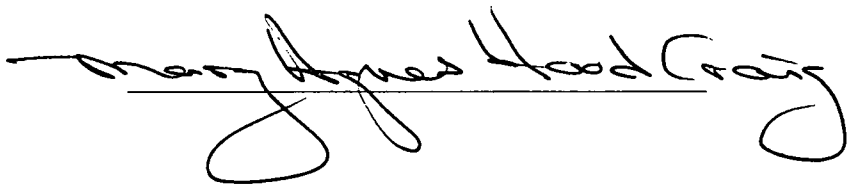
SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned certifies that on this 17th day of July, 2017, a copy of the foregoing Return was served on the Appellants by depositing said copy in the U.S. Mail, with sufficient first class postage, on the following counsel at the addresses listed below:

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

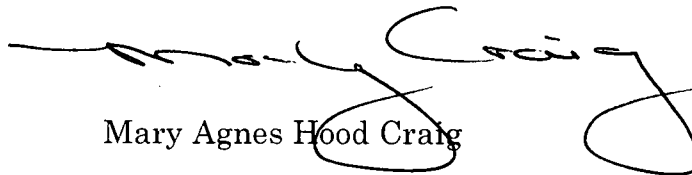
Re: Genesie Fulton, individually, and as Next Friend of Bryson F., a minor v. L. William Goldstein, M.D., individually and d/b/a L. William Goldstein OB-GYN
C/A No. 2013-CP-21-00587, Florence CP
Appellate Case No. 2015-001237
HLF File No. 25.053

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Respondents Return to the Petition for Rehearing in the above-referenced matter. Please return a clocked-in copy in the envelope provided. By copy of this letter we are serving counsel for the Appellant.

Kind regards,

Yours truly,



Mary Agnes Hood Craig

MHC/jad
Enclosure

cc: Edward L. Graham, Esquire
Diane M. Rodriguez, Esquire