

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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AUG 09 2017

APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

S. Jackson Kimball, Circuit Court Judge

Case No. 2015-002135

Angela Patton, as Next Friend of Alexia L., a minor,Petitioner

v.

Dr. Gregory A. Miller, Rock Hill Gynecological & Obstetrical Associates, P. A.
and Amisub of South Carolina, d/b/a Piedmont Medical Center,Respondents.

MOTION FOR RECONSIDERATION

Edward L. Graham
GRAHAM LAW FIRM, P.A.
PO Box 550
Florence, South Carolina 29503
Phone: 843/662-3281
E-Fax: 800/859-7028
ATTORNEY FOR PETITIONERS

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Questions Presented

- I. **Did the Court overlook or misapprehend that Petitioner's limited concession about the claim for pre-majority medical expenses against the hospital applied only to her motion for leave to amend her pleading and not to any representative claim on behalf of the minor?**

- II. **Did the Court overlook or misapprehend that its decision implicitly deems certain of Petitioner's representative claims against the hospital for pre-majority medical expenses to be timely, or potentially timely, in light of its recognition that the minor may be a real party in interest?**
 - A. **Did the Court overlook, misapprehend or fail to make an express finding that the minor's statute of limitations applies to representative claims on behalf of the minor for pre-majority medical expenses, where the minor is a real party in interest?**
 - B. **Did the Court overlook or misapprehend that representative claims on behalf of a minor for pre-majority medical expenses should be allowed to go forward, where such claims were timely commenced under the minor's statute of limitations, and where the minor is a real party in interest, or there is a genuine issue of material fact as to the minor's status as a real party in interest?**

Statement of the Case

In the interest of brevity, Petitioner adopts by reference the Statement of the Case set forth in Petitioner's Brief to this Court dated August 30, 2016. Since the submission of that Brief, this Court has issued its decision On Writ of Certiorari to the Court of Appeals, filed July 26, 2017, Op. No. 27730.

Introduction

This motion for reconsideration is limited to the Court's affirmation of the partial summary judgment on behalf of Amisub of South Carolina d/b/a Piedmont Medical Center (hereinafter, "Hospital"). Although Petitioner did concede that her individual claim against the Hospital was untimely, she never made any such concession as to her representative claim on behalf of the minor. Petitioner contends and expects to prove at trial that the minor is a real party in interest as to her representative claims for pre-majority medical expenses, and that such representative claims are timely under the applicable statute of limitations.

Argument

- I. The Court overlooked or misapprehended that Petitioner's limited concession about her claim against the hospital for pre-majority medical expenses applied only to her motion for leave to amend her pleading and did not relate to any representative claim on behalf of the minor.**

On the last page of the majority's decision in this case, the Court states, "Patton has effectively conceded that she may not pursue a claim for pre-majority medical expenses against Amerisub." *Patton v. Miller, Op. 27730, Filed July 26, 2017, 21:7-8.* Petitioner respectfully submits that the Court overlooked or misapprehended the limited scope of her concession that her individual claims against the Hospital may be untimely. That concession did not apply to any representative claims on behalf of the minor, but only to her motion for leave to amend her pleading so that she could assert an individual claim against the Hospital.

Petitioner asserted representative claims on behalf of the minor for pre-majority medical expenses from the commencement of her claims. (R. 11-18; 22-23) However, she had made no individual claim for such expenses prior to her motion for leave to amend her summons and complaint. The sole purpose of that motion was to enable her to assert her individual claim. With regard to the obstetrical Respondents, the grant of leave to amend signifies that Petitioner's individual claim against them is timely on that basis alone, because the amended pleading relates back to the date her claim against those defendants was commenced, which was within three years of the minor's birth and thus within the parental statute of limitations.

In contrast, any grant of leave to amend Petitioner's pleading against the Hospital would have not enabled her to assert a timely individual claim against it on that basis, even with relation back of the amended pleading. That is of course because any potential relation back would have related back to the date Petitioner's claim against the Hospital commenced, which was not within three years after the minor's birth and thus outside of the parental statute of limitations.

Based on this analysis, Petitioner recognized that a motion for leave to amend would not benefit her with respect to any individual claim by her against the Hospital. Petitioner's concession was restricted to her conclusion and representation to the Court that obtaining leave to amend her pleading to assert an individual claim against the Hospital would be fruitless.

The Court seems to have inferred that Petitioner had waived all claims against the Hospital, not just individual but also representative claims. Respondent tried to lend credence to that inference by quoting snippets of the hearing transcript and Order, taken out of context. Specifically, in Respondents' Brief on pages 24 and 25, the Hospital set out quotes from that transcript and Order. (R. 9, 170: 1-12). The Hospital suggested that those quotes, taken out of

context, demonstrated that Petitioner conceded that all of her pre-majority medical expense claims against the Hospital were untimely, both individual and representative claims.

In context, however, it is clear that the concession had nothing whatsoever to do with any representative claim, but was limited to Petitioner's individual claim to be asserted if she prevailed in her motion for leave to amend. Petitioner's complete argument on the motion for leave to amend is set forth in the Record on Appeal (R. 162: 9 – 170: 23). That context proves the limited scope of Petitioner's concession.

Further proof of the limited scope of Petitioner's concession derives from review of the Respondents' Brief itself. On page 24 of that brief, Respondents quote Petitioner's counsel about concession or withdrawal of a motion against the Hospital. (R. 170:1-12) Significantly, that quote appears in the section of Respondents' Brief addressing the "motion to amend" to assert the individual claim. On page 25 of Respondents' Brief, they quote from the lower court's Order regarding Petitioner's withdrawal of a motion against the Hospital. Again, that quote appears in the section of Respondents' Brief addressing the "motion to amend." The language quoted from the Order appears directly under the court's heading, "Motion to Amend Complaint." (R. 9) That motion sought leave to assert Petitioner's individual claim for pre-majority medical expenses, and for no other reason.

Petitioner's concession or withdrawal was plainly limited to that motion for leave to assert an individual claim for pre-majority expenses against the Hospital. It had no bearing on any representative claim on behalf of the minor to recover pre-majority expenses. The representative claim on behalf of the minor for pre-majority medical expenses had already been asserted, and was not at all involved with the motion for leave to amend or any concession or withdrawal related thereto.

For the reasons stated, Petitioner respectfully submits that the Court overlooked or misapprehended the limited scope of the Petitioner's concession or withdrawal of the motion for leave to amend. Petitioner did not concede anything with respect to the minor's own claim for pre-majority medical expenses, asserted by his representative from the beginning.

II. The Court overlooked or misapprehended that its decision implicitly deems certain of Petitioner's representative claims against the hospital to be timely, or potentially timely, in light of its recognition that the minor may be a real party in interest.

Unless the Court holds that Petitioner has conceded that her representative claims against the Hospital are untimely, Petitioner respectfully contends that such claims were timely, to the extent the minor was a real party in interest. That is because the minor's statute of limitations had not run when the representative claims against the Hospital were commenced.

A. The minor's statute of limitations applies to representative claims on behalf of a minor for pre-majority medical expenses, where the minor is a real party in interest.

The statute of limitations for medical malpractice claims of adults and minors is set forth in S.C. Code of Laws Section 15-3-545 (a) and (c), respectively. The Court did not expressly state that the minor's longer statute of limitations would apply to representative claims where the minor is a real party in interest, but that conclusion logically follows from the Court's extensive discussion addressing who is the real party in interest under various scenarios.

For example, the Court stated that "...this Court has never applied *Hughey* [*Hughey v. Ausborn*, 249 S.C. 154 S.E.2d 839 (1967)] and *Tucker* [*Tucker v. Buffalo Cotton Mills*, 76 S.C. 539, 57 S.E. 626 (1907)] categorically, and we have not held that a minor may never recover her own medical bills." The Court also noted favorably that in *McNeil v. United States*, 519 F. Supp. 283, 290 (D.S.C. 1981) the district court had allowed a representative's claim on behalf of the minor for pre-majority medical expenses, even though the parental statute of limitations had

expired. To the same effect is *Sox v. United States*, 187 F. Supp. 465, 469-70 (E.D. S.C. 1960), cited favorably by this Court for its holding that pre-majority medical expenses may be recovered by the minor, and that the purpose of ““these rules”” is to avoid double recovery not to ““excuse liability.”” Upon reading the Court’s decision, and scrutinizing its significance, one is left with the distinct impression that a minor’s statute of limitations applies when the minor is a real party in interest under Rule 17(a), SCRPC. Petitioner respectfully suggests, however, that the implicit finding was not stated in such explicit terms as to be crystal clear to the bench and bar.

Petitioner respectfully requests the Court to make explicit its implicit ruling that the minor’s statute of limitations applies to all claims involving the minor as a real party in interest. The Court’s real party in interest analysis supports allowing the representative claims for pre-majority medical expenses to go forward against the Hospital where, as here, suit is commenced within the minor’s statute of limitations and the minor is alleged to be a real party in interest regarding pre-majority medical expenses. If the Petitioner proves at trial that the minor is the real party in interest as to some or all such claims, those claims should be held timely under the Court’s real party in interest analysis.

For these reasons, Appellant respectfully submits that the Court overlooked, misapprehended or failed to make an express finding that the minor’s statute of limitations applies to representative claims for which a minor is the real party in interest.

B. Representative claims on behalf of a minor for pre-majority medical expenses should be allowed to go forward, where timely commenced under the minor’s statute of limitations, and where the minor is a real party in interest, or there is a genuine issue of material fact as to the minor’s status as a real party in interest.

The representative claims in this case against the Hospital were commenced by filing and service of a Notice of Intent to Sue and the subsequent filing and service of an amended summons and complaint on April 2, 2012. That was within the statute of limitation for minors’ medical

malpractice claims set forth in S.C Code of Laws Section 15-3-545(c). Thus, if the subject claims are governed by the statute of limitations for minors, the claims were timely commenced.

It is axiomatic that to prevail on a motion for summary judgment, the moving party must meet its burden of proving the absence of a genuine dispute of material fact, and entitlement to judgment as a matter of law. Moreover, all facts and inferences must be construed in favor of the non-moving party. As the Court observed in its decision, either the minor and/or the Petitioner may be proven to be the real party in interest.

Petitioner contends, against her personal interest, that the minor is a real party in interest. That is confirmed by her initial assertion of all claims, pre-majority and otherwise, on behalf of the minor, with none asserted individually. As the Court recognized, her asserted waiver and assignment represent a ratification of her assertion that all such claims belong to the minor.

Representations have been made to the Court that all or substantially all past medical expenses were paid by Medicaid. It may be inferred then that Petitioner's ability to pay for high medical expenses is limited at best. Petitioner asks the Court to take judicial notice of the political climate in Washington, D.C., involving persistent efforts to reduce Medicaid eligibility.

For all of these reasons it is more than plausible that the minor is in fact a real party in interest. The Hospital's failure to meet its burden of proving the absence of a genuine dispute of material fact precludes summary adjudication.

Conclusion


For the reasons stated, Petitioner respectfully requests the Court to:

- (a) withdraw its grant of partial summary judgment on behalf of the Hospital;
- (b) withdraw its finding that Petitioner "effectively conceded" that she could not pursue a claim for pre-majority medical expenses against the Hospital;

- (c) clarify and expressly hold that representative claims on behalf of a minor as a real party in interest are subject to the statutes of limitation for minors' claims;
- (d) hold that the representative claims of the minor against the hospital for pre-majority medical expenses were timely if the minor is determined to be the real party in interest; and
- (e) hold that the representative claims on behalf of the minor as the real party in interest to recover compensation for pre-majority medical expenses should go forward, since there is a genuine dispute of material fact regarding the minor's status as a real party in interest, and because the statute of limitations for minors applies if the minor is ultimately determined to be a real party in interest.

In the alternative, Petitioner requests re-argument on these issues.

Respectfully submitted,

By: 

Edward L. Graham
GRAHAM LAW FIRM, P.A.
PO Box 550
Florence, South Carolina 29503
Phone: 843/662-3281
E-Fax: 800/859-7028
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PROOF OF SERVICE

The undersigned, an attorney in this matter for the Petitioner, certifies that I have this 9th day of August, 2017 served copies of the Motion for Reconsideration upon counsel for the Respondents by depositing them in the United States mail, first-class postage prepaid, addressed to:

Thomas C. Salane, Esq.
R. Hawthorne Barrett, Esq.
Turner Padgett Graham & Laney, PA
PO Box 1473
Columbia, SC 29202
803/254-2200
*Attorneys for the Respondents Dr. Gregory
A. Miller and Rock Hill Gynecological &
Obstetrical Associates, P.A.*

Ashby W Davis, Esq.
Davis & Snyder, PA
5 Hawthorne Park CT

Greenville, SC 29615
864/335-3500
Attorney for Dr. Gregory A. Miller

William U. Gunn, Esq.
Joshua T. Thompson, Esq.
Holcombe Bomar, PA
PO Drawer 1897
Spartanburg, SC 29304
864/594-5300
*Attorneys for Respondent Amisub of
South Carolina, Inc. d/b/a Piedmont
Medical Center*

By:



Edward L. Graham
GRAHAM LAW FIRM, P.A.
PO Box 550
Florence, South Carolina 29503
Phone: 843/662-3281
E-Fax: 800/859-7028
egraham@grahamlawfirm.net
ATTORNEY FOR PETITIONERS
GRAHAM LAW FIRM

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