

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**AUG 18 2017**

**S.C. SUPREME COURT**

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

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Case No. 2009-CP-46-5195

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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.

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**RESPONDENT AMISUB OF SOUTH CAROLINA,  
D/B/A PIEDMONT MEDICAL CENTER'S  
RETURN TO MOTION FOR RECONSIDERATION**

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William U. Gunn  
Joshua T. Thompson  
Holcombe Bomar, P.A.  
P.O. Drawer 1897  
Spartanburg, SC 29304  
(864) 594-5300

Attorneys for Respondent  
Amisub of South Carolina, d/b/a  
Piedmont Medical Center

On July 26, 2017, this Court issued a published decision affirming the decision of the South Carolina Court of Appeals as to Respondent Amisub of South Carolina, d/b/a Piedmont Medical Center (“Amisub”)<sup>1</sup>, which in turn affirmed the Circuit Court’s grant of summary judgment to Amisub as to any and all claims asserted for pre-majority medical expenses and related necessities. Patton v. Amisub of South Carolina, d/b/a Piedmont Medical Center, et al., Op No. 27730 (S.C. Sup. Ct. filed July 26, 2017) (Shearouse Adv. Sh. No. 28 at 87).

Petitioner now has filed a motion for reconsideration (the “Petition<sup>2</sup>”). Within her Petition, Petitioner argues that this Court failed to consider whether Patton in her representative capacity was a real party in interest whose claims for pre-majority medical expenses could survive the limitations period imposed by S.C. Code Ann. § 15-3-545(A). In response, Amisub submits that this Court thoroughly examined that argument in its 23-page opinion and correctly upheld partial summary judgment as to Amisub based on application of Rules 15 and 17, SCRPC.

I.

Initially, Petitioner’s concession as to the viability of the claim to recover pre-majority medical expenses is much broader than she states in Argument I of her Petition. At the end of oral arguments before the Supreme Court, Petitioner’s counsel made clear that Petitioner had only two paths to prevail against Amisub:

THE COURT: So in order to keep Amisub in this suit, we have to buy your waiver argument.

PETITIONER’S COUNSEL: To keep [Amisub] in the suit as to the pre-majority medical expenses, unless - - unless you choose to abrogate the common law, I think that’s a fair interpretation.<sup>3</sup>

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<sup>1</sup>Amisub properly is identified as Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center.

<sup>2</sup> Amisub treats the motion for reconsideration as a petition for rehearing pursuant to Rule 221, SCACR, given that Petitioner addresses the Rule 211 standard throughout her motion.

<sup>3</sup> This exchange may be verified at <http://media.sccourts.org/videos/2015-002135.mp4>, 37:55 – 38:24 (last visited August 16, 2017).

Petitioner, therefore, not only conceded that “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...” (Petition, p. 3). Petitioner, likewise, conceded that her *only* two avenues for recovery of pre-majority medical expenses against Amisub were (-) her waiver argument or (-) abrogation of the common law.<sup>4</sup>

These concessions are binding on Appellant. See, e.g., Porter v. S.C. Pub. Serv. Com’n, 333 S.C. 12, 30, 507 S.E.2d 328, 337 (1998) (internal citation omitted) (“A stipulation is an agreement, admission, or concession made in judicial proceedings by the parties or their attorneys and is binding upon those who make them.”); Nat’l Time Share Sales, Inc. v. Mar. Ltd. P’ship, 297 S.C. 43, 47, 374 S.E.2d 678, 681 (1988) (noting that the appellant was estopped from asserting a position contrary to a concession at oral argument).

The Supreme Court did not overlook or misapprehend Petitioner’s waiver argument or her argument that the common law should be abrogated. Considering the waiver argument—or the Rule 17(a), SCRCF ratification argument as the Court has termed it, this Court reasoned that ratification required approval by the proper party of another bringing the action which would have been shown through filing the claim and formally expressed at the time of Petitioner’s Rule 59(e), SCRCF motion. Patton, supra, at 98.

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<sup>4</sup> These concessions are in addition to previous statements made by Appellant’s counsel during oral argument in the Circuit Court. For example, at the hearing on Amisub’s Motion for Summary Judgment, well before Appellant filed her Motion for Leave to Amend, Appellant’s counsel candidly stated, “But we believe for so many reasons as to the doctor and his PA there’s so many reasons why Your Honor should deny the motions. Frankly it’s a harder case as to the hospital because the claim against the hospital was not initiated until after the three years.” [App. 142, lines 12 – 16.] Likewise, Appellant’s counsel conceded at a hearing on Appellant’s Rule 59(e), SCRCF motion that the Motion for Leave to Amend would be an exercise in futility because the amendment would only relate back to 2012, well outside the applicable three-year statute of limitations. [App. 172, lines 6 – 12.]

Based on that analysis, this Court correctly declined to salvage Petitioner's claim for pre-majority medical expenses against Amisub because Patton in her individual capacity could not have ratified, waived, or assigned a viable cause of action to Petitioner at the time that the action was initiated against Amisub. As the Court appropriately determined, the three year statute of limitations set forth in S.C. Code Ann. § 15-3-545(A) on Patton's claims had expired. Patton, supra, at 103. To the extent that Petitioner's filing of her case against Amisub ratified, waived, or assigned Patton's claim for pre-majority medical expenses, Petitioner received nothing more than an invalid and procedurally-barred cause of action.<sup>5</sup>

Likewise, this Court's thorough opinion, which includes citations to cases Petitioner argued to advance her abrogation argument, demonstrates that Petitioner's abrogation argument was considered. However, this Court made it expressly clear that it did not reach Petitioner's abrogation argument.<sup>6</sup> Instead, the Court explained that it chose to frame the question differently and analyze the case pursuant to Rules 15 and 17, SCRPC. Patton, supra, at 108. As set forth below in detail and incorporated by reference, the Court properly determined that Patton individually—the only real party in interest determinable by the Court based on the facts before it—could not take advantage of any of the three mechanisms to avoid forfeiture provided by Rule 17, SCRPC because she did not timely commence her claim against Amisub.

Following extensive briefing and oral arguments in the Circuit Court, the Court of Appeals, and the Supreme Court, Petitioner conceded that the pre-majority medical expense claims against Amisub could only be salvaged if this Court adopted her waiver argument or abrogated the common law. The Court thoroughly considered both arguments yet still affirmed

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<sup>5</sup> To the extent necessary, Amisub incorporates by reference all of the arguments on this issue contained in the Final Respondents' Brief. [App. 254 – 261.]

<sup>6</sup> To the extent necessary, Amisub incorporates by reference all of the arguments on this issue contained in the Final Respondents' Brief. [App. 245 – 253.]

partial summary judgment in favor of Amisub in a thorough opinion. Petitioner, therefore, has not established any basis for rehearing, and the Petition should be denied.

## II.

Setting aside Petitioner's concessions, Petitioner's argues in her Petition that this Court overlooked or misapprehended that Alexia *could* be a real party in interest and, therefore, her potential claims for pre-majority medical expenses *could* be considered timely pursuant to S.C. Code Ann. § 15-3-545(D). Because Petitioner failed to put forth even a mere scintilla of evidence supporting her argument that Alexia was a real party in interest at the filing her claim against Amisub, this Court appropriately applied Rules 17 and 15, SCRPC in determining that Patton—the only known real party in interest—failed to timely commence her action against Amisub for Alexia's pre-majority medical expenses.

In reaching its decision, this Court thoroughly considered various situations in which Alexia's representative could be a real party in interest for both future pre-majority medical expenses and incurred pre-majority medical expenses. Based on application of the law to the facts contained in the record, the Court was able to conclude that Patton in her individual capacity is a real party in interest for these categories of damages based upon S.C. Code Ann. §§ 63-5-20, 30. Patton, *supra*, at 92, 93.

As to future pre-majority medical expenses, the Court noted that Patton in her representative capacity *could* become a real party in interest *if* she later became Alexia's conservator and *if* there was a recovery. However, the Court correctly noted it could not make that leap because "whether a particular plaintiff is a real party in interest must be determined at the time of filing, and the identity of the conservator is often not known until the time a recovery is made." Patton, *supra*, at 93.

As to incurred pre-majority medical expenses, the Court pointed to Patton's

“representation” to the Circuit Court that Alexia is covered by Medicaid in concluding that *if* incurred medical expenses had been paid by Medicaid, the minor’s representative *may* have “a legitimate claim” that she is a real party in interest. The Court further stated that alternatively where there was no third party payor, “the parent may be the only real party in interest.” Patton, supra, at 94 – 95.

In both situations, this Court was unable to determine that anyone other than Patton in her individual capacity was a real party in interest because Appellant failed to submit *any* evidence at the Circuit Court level to support such a conclusion. For example, Appellant never submitted and the record on appeal and appendix are devoid of any evidence sufficient under Rule 56(c), SCRCF (pleadings, depositions, answers to interrogatories, admissions on file, and affidavits) supporting that Alexia is insured by Medicaid, that Medicaid has paid sums on Alexia’s behalf related the claims in this case, that Patton cannot pay for the medical expenses, or the like. It was Appellant’s responsibility to submit more than bald representations and to submit actual evidence of any alleged factual disputes such as these. She failed to do so to her detriment. See, e.g., Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct.App. 1994) (internal citations omitted) (“When a plaintiff is faced with a defendant’s motion for summary judgment that is supported by the evidence, the plaintiff cannot defeat the motion by relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof....A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.”).

In the absence actual evidence supporting Appellant’s argument in this Petition that Alexia *could* be a real party in interest, this Court appropriately applied Rules 17 and 15, SCRCF to Patton in her individual capacity—the only person who the Court could determine to be a real party in interest as to the pre-majority medical expenses.

Noting that Rule 17(a), SCRPC allowed for ratification, joinder, or substitution to avoid forfeiture, the Court analyzed each mechanism to determine whether Patton's claims for pre-majority medical expenses could be salvaged. Patton, supra, at 98 – 108. As set forth above, considering the Rule 17(a) ratification (waiver) argument, this Court reasoned that ratification required approval by the proper party of another bringing the action which would have been shown through filing the claim and formally expressed at the time of Petitioner's Rule 59(e), SCRPC motion. Patton, supra, at 98. To the extent that Petitioner's filing of her case against Amisub ratified, waived, or assigned Patton's claim for pre-majority medical expenses, Petitioner received nothing more than an invalid and procedurally-barred cause of action.<sup>7</sup> As the Court appropriately determined, the three year statute of limitations set forth in S.C. Code Ann. § 15-3-545(A) on Patton's claims had expired. Patton, supra, at 103.

The Court further noted that Patton attempted Rule 17(a) joinder and substitution by moving to amend her complaint. Patton, supra, at 98. As stated above, Appellant conceded most recently in her Petition that “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....” (Petition, p. 3). In addition to Appellant's binding concessions on this point, this Court correctly observed, “In March 2012 when Patton filed her lawsuit against Amisub, and in August 2013 when Patton moved to amend her complaint to assert claims in her individual capacity, the three year statute of limitations [set forth in S.C. Code Ann. § 15-3-545(A)] on Patton's individual claims had expired.”<sup>8</sup> Patton, supra, at 103.

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<sup>7</sup> To the extent necessary, Amisub incorporates by reference all of the arguments on this issue contained in the Final Respondents' Brief. [App. 254 – 261.]

<sup>8</sup> This is the same three year statute of limitations which Appellant's counsel was referencing during oral arguments on Amisub's Motion for Summary Judgment when Appellant's counsel candidly stated, “Frankly it's a harder case as to the hospital because the claim against the hospital was not initiated until after the three years.” [App. 142, lines 14 – 16.]

Contrary to Appellant's argument in her Petition, this Court did not overlook or misapprehend the possibility that Alexia *could* be a real party in interest and, therefore, her potential claims for pre-majority medical expenses *could* be considered timely pursuant to S.C. Code Ann. § 15-3-545(D). Simply, Appellant failed to create through the submission of evidence any factual issue that would have allowed the court to determine that Alexia actually is a real party in interest. Considering Patton in her individual capacity—the only real party in interest who the Court could ascertain based on the record before it, the Court correctly concluded that Patton could not maintain a claim for Alexia's pre-majority medical expenses because Patton did not attempt to initial a claim in her individual capacity until the applicable three-year statute of limitations expired.

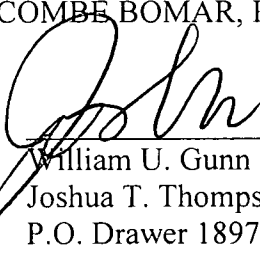
#### CONCLUSION

Based on the foregoing discussion, the Respondent Amisub of South Carolina, d/b/a Piedmont Medical Center respectfully requests that this Court deny the Motion for Reconsideration.

Respectfully submitted,

HOLCOMBE BOMAR, P.A.

BY:

  
William U. Gunn

Joshua T. Thompson

P.O. Drawer 1897

Spartanburg, SC 29304

(864) 594-5300

Attorneys for Respondent Amisub of South Carolina,  
d/b/a Piedmont Medical Center

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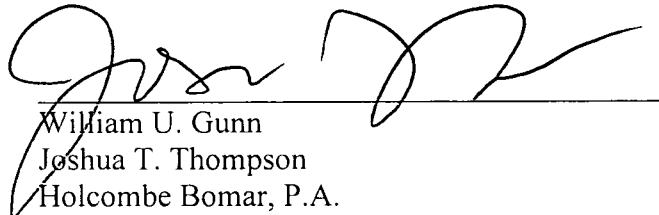
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**PROOF OF SERVICE**

The undersigned, attorneys in this matter for Respondent Amisub of South Carolina, d/b/a Piedmont Medical Center, certifies that he has this **18th day of August 2017**, served a copy of the **Respondent Amisub of South Carolina, d/b/a Piedmont Medical Center's Return to Motion for Reconsideration** upon counsel for of record by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Edward L. Graham, Esq., Graham Law Firm; 383 W. Cheves, St., Florence, SC 29501; Thomas C. Salane, Esq. and R. Hawthorne Barrett, Esq., Turner Padget Graham & Laney, PA, PO Box 1473, Columbia, SC 29202, and Ashby W. Davis, Esq., Davis, Snyder, Williford & Lehn, P.A., 5 Hawthorne Park Court, Greenville, SC 29615.



William U. Gunn  
Joshua T. Thompson  
Holcombe Bomar, P.A.  
P.O. Drawer 1897  
Spartanburg, SC 29304  
(864) 594-5300

Attorneys for Respondent Amisub of South  
Carolina, d/b/a Piedmont Medical Center