

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2017-CP-46-00291
Appellate Case No. 2017-002123

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SC Court of Appeals

Melissa Scott,

Respondent,

v.

Palmetto Medical Group, Nimish Patel, MD,
Kishor Patel, PA-C, Shepali Patel, MD, Magan
Grigg, PA, Piedmont HealthSouth Rehabilitation,
LLC d/b/a HealthSouth Rehabilitation Hospital of
Rock Hill, Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare System,
Carolinas Physician Network, Inc. d/b/a ID
Consultants and Infusion Care Specialists,

Defendants.

Of which Charlotte-Mecklenburg Hospital
Authority d/b/a Carolinas Healthcare System,
Carolinas Physician Network, Inc. d/b/a ID
Consultants and Infusion Care Specialists,

Appellants.

MEMORANDUM OF APPEALABILITY

Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System and Carolinas Physician Network, Inc. d/b/a ID Consultants and Infusion Care Specialists respectfully submit this Memorandum of Appealability pursuant to the request of Deputy Clerk of the South Carolina Court of Appeals.

BACKGROUND

This medical malpractice action arises from care rendered to Respondent in September 2015 at ID Consultants and Infusion Care Specialists in Charlotte, North Carolina, by Dr. Jonathan Polk. Dr. Polk is a physician licensed to practice only in the State of North Carolina and provided care to Respondent only in the State of North Carolina. Accordingly, Appellants filed Motions to Dismiss Plaintiff's Complaint based upon, *inter alia*, lack of personal jurisdiction and improper venue. The trial court denied Appellants' various motions.

APPEALABILITY

I. Constitutional Requirements of Personal Jurisdiction

Appellants challenge the determination that the trial court had personal jurisdiction over them, and specifically that the exercise of personal jurisdiction in these particular circumstances does not comport with the constitutional requirements of due process of law. Because the trial court's Order impacts Appellants' rights under the Fourteenth Amended of the United States Constitution, it is immediately appealable. The power of South Carolina courts to exercise personal jurisdiction over foreign defendants arises from S.C. Code. Ann. § 36-2-803, and § 36-2-802. South Carolina's long-arm statute has been construed to extend to the outer limits of the Due Process Clause of the Fourteenth Amended of the United States Constitution. Meyer v. Paschal, 330 S.C. 175, 498 S.E.2d 635 (1998). In evaluating the "traditional notions of fair play and substantial justice" aspect of this State's exercise of jurisdiction, this Court has noted that "[c]ases involving medical services are quite different from those involving other commercial activity." Hume v. Durwood Med. Clinic, Inc., 282 S.C. 236, 242, 318 S.E.2d 119, 122 (1984).

It is clear that when a patient travels to receive professional services without having been solicited . . . then the client, who originally traveled to seek services

apparently not available at home, ought to expect that he will have to travel again if he thereafter complains that the services sought by him in the foreign jurisdiction were there rendered improperly.

Id. at 242, 318 S.E.2d at 122–23 (quoting Gelineau v. New York Univ. Hosp., 375 F. Supp. 661 (D.N.J. 1974)).

In Hume, as in this case, the trial court denied the motion to dismiss of the defendant North Carolina physicians, and an immediate appeal followed. Id. at 237, 318 S.E.2d at 120. The Court of Appeals accepted the appeal and reversed the trial court's order and dismissed the action based upon a constitutional analysis of the exercise of personal jurisdiction over non-resident physicians. Id. at 237, 318 S.E.2d at 120. Other examples of cases immediately appealed following a denial of a motion to dismiss for lack of personal jurisdiction based upon a due process analysis include: Aviation Assoc. and Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 402 S.E.2d 177 (1991); S. Plastics Co. v. S. Commerce Bank, 310 S.C. 256, 423 S.E.2d 128 (1992); Clark v. Key, 304 S.C. 497, 405 S.E.2d 599 (1991); Hammond v. Butler, 300 S.C. 458, 388 S.E.2d 796 (1990); White v. Stephens, 300 S.C. 241, 387 S.E.2d 260 (1990); Cozi Investments v. Schneider, 272 S.C. 354, 252 S.E.2d 116 (1979); Parker v. Williams & Madjanik, Inc., 270 S.C. 570, 243 S.E.2d 451 (1978); Jacobs v. Assn. of Indep. Colleges and Schools, 265 S.C. 459, 219 S.E.2d 837 (1975); Fields v. INA Filtration Corp., 292 S.C. 614, 358 S.E.2d 160 (Ct. App. 1987); Lackey v. Treadwell, 282 S.C. 81, 316 S.E.2d 724 (Ct. App. 1984).

“The Fourteenth Amendment due process constraint . . . applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued.” BNSF Ry. Co. v. Tyrrell, 137 S.Ct. 1549, 1558–59 (2017). While a state court may exercise general jurisdiction over foreign corporations

in the absence of specific personal jurisdiction, it may do so only when the corporation's contacts with the state "are so 'continuous and systematic' as to render them essentially **at home** in the forum State." Goodyear Dunlop Tires Op., S.A. v. Brown, 564 U.S. 915, 919, 131 S.Ct. 2846, 2851 (2011) (emphasis added). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as **at home**." Id. at 924, 131 S.Ct. at 2853–54 (emphasis added). "The 'paradigm' forums in which a corporate defendant is 'at home' are the corporation's place of incorporation and its principal place of business, but in an 'exceptional case,' a corporate defendant's operations in another forum 'may be so substantial and of such a nature as to render the corporation at home in that State.'" BNSF Ry. Co., 137 S.C. at 1552–53 (quoting Daimler AG v. Bauman, 571 U.S. ___, ___, 134 S.Ct. 746, 761 n.19 (2014)). In BNSF Ry. Co., the United States Supreme Court determined that the state court could not exercise general jurisdiction over the foreign corporation, despite the fact that the foreign corporation had over 2,000 miles of railroad track and more than 2,000 employees in the forum state. Id. at 1559. "[I]n-state business . . . does not suffice to permit the assertion of general jurisdiction over claims . . . that are unrelated to any activity occurring" in the forum state." Id.

Appellants' rights under the Fourteenth Amendment are substantial and valuable. Appellants contend that the exercise of personal jurisdiction in this action violates their rights under the Fourteenth Amendment because it does not comport with the traditional notions of fair play and substantial justice. Accordingly, the appeal from the trial court's denial of the motion to dismiss for lack of personal jurisdiction is immediately appealable pursuant to S.C. Code Ann. § 14-3-330, and it involves substantial constitutional issues.

II. Appellants are Public Officers

Appellants, as public officers, have a substantial right to have this matter tried in the county in which the events giving rise to the cause of action arose, which was Mecklenburg County, North Carolina. The “right to be tried in the county of one’s residence . . . is a ‘substantial and valuable right.’” Henley v. North Trident Regional Hospital, 275 S.C. 193, 195, 269 S.E.2d 328, 328 (1980) (quoting Landvest Associates v. Owens, 263 S.E.2d 646 (S.C. 1980)). While the right to transfer venue may not be immediately appealable, the denial of Appellants’ Motion to Dismiss for Improper Venue in these circumstances impacts a substantial right and involve a novel question of law. S.C. Code Ann. § 15-7-20(2) states:

Actions for the following causes must be tried in the county where the cause or some part thereof arose, subject to the like power of the court to change the place of trial:

(2) Against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who by his command or in his aid shall do anything touching the duties of such officer.

Similarly, N.C. Gen. Stat. § 1-77(s) states:

Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the power of the court to change the place of trial, in the cases provided by law:


(2) Against a public officer or person especially appointed to execute his duties, for an act done by him by virtue of his office; or against a person who by his command or in his aid does anything touching the duties of such officer.

In Wells v. Cumberland County Hosp. Sys., Inc., 150 N.C. App. 584, 564 S.E.2d 74 (2002), the North Carolina Court of Appeals evaluated the question of whether a hospital authority created under the North Carolina Municipal Hospital Act, N.C. Gen. Stat. § 131E-20, was a “public officer” for purpose of N.C. Gen. Stat. § 1-77(2). The Court held that the

defendant hospital authority had been created under the Municipal Hospital Act and was operated as a municipal hospital and, therefore, qualified as a “public officer.” Wells, 150 N.C. App. at 589, 564 S.E.2d at 77. Neither the North Carolina nor the South Carolina statute defines “public officer,” and no South Carolina appellate court has defined the term. However, in Stalheim v. Doskocil, 275 S.C. 252, 269 S.E.2d 346 (1980), the South Carolina Supreme Court determined that a defendant hospital and physicians were public officers for purpose of S.C. Code Ann. § 15-7-20(2). Contrary to the trial court’s Orders, which were drafted by Respondent’s counsel, S.C. Code Ann. § 15-7-20(2) does not state any relationship to the South Carolina Tort Claims Act, nor does it require that a “public officer” be limited to a public officer of the State of South Carolina. Appellants were created pursuant to the North Carolina Municipal Hospital Act and are, therefore, “public officers.” Accordingly, they have a substantial right to have this matter brought in Mecklenburg County, North Carolina, where the events giving rise to the claims against them arose.

Finally, if this matter proceeds to trial and this Court later determines that the action was improperly brought in South Carolina, the action will be forever lost to Respondent. The events at issue occurred in September 2015. If it is now determined that the matter was improperly brought in South Carolina, Respondent has time to file the action in North Carolina. However, if the case is involuntarily dismissed after having gone through a trial in South Carolina, the Respondent will be time-barred from re-filing the action in North Carolina. Accordingly, Appellants and Respondents both have a substantial interest in the prompt resolution of these jurisdictional questions.

November 20, 2017.


s/ Scott S. Addison
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November 20, 2017

VIA FEDERAL EXPRESS

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
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SC Court of Appeals

Re: *Scott v. Palmetto Medical Group, et al.*
York County File No. 2017-CP-46-00291
South Carolina COA File No. 2017-002123

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of Defendants Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System, Carolinas Physicians Network, Inc. d/b/a ID Consultants and Infusion Care Specialists' Memorandum of Appealability in the above-referenced matter.

Kindly file the original and return a file-stamped copy me in the enclosed self-addressed stamped envelope. Please contact me should you have any questions. Thank you.

Sincerely,

Karen Tahan
Legal Assistant

Enclosures

cc: Chad McGowan, Esq./Ashley White Creech, Esq.
(w/enclosure)

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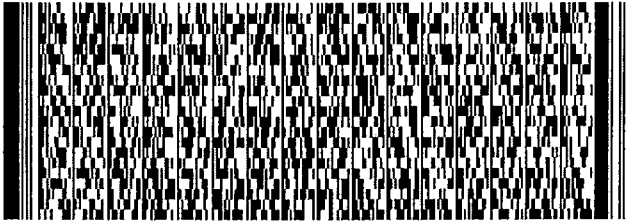
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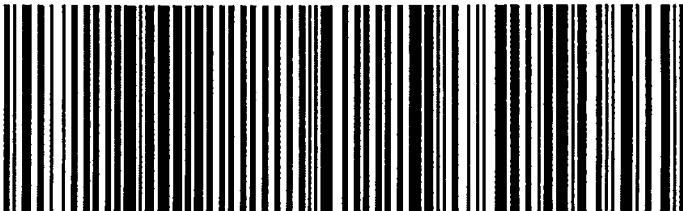
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