

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2012-CP-38-0845

RECEIVED
JAN 16 2018
SC Court of Appeals

Ralph C. Williams, Sr., and Linda Williams, Appellants,

v.

Patricia A. Johnson, Josette Peppers
and UniHealth Post-Acute Care-Orangeburg, LLC..... Respondents.

INITIAL REPLY BRIEF



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STATUTES

S.C. Code Ann. § 43-35-25 (2015).....1

MISCELLANEOUS

Jean Hoefler Toal, *et al.*, *Appellate Practice in South Carolina* (3rd ed. 2016)2

ARGUMENTS

I. PLAINTIFF CORRECTLY CHARACTERIZED THE TRIAL COURT'S RULING

Defendants assert Plaintiff mischaracterized the trial court's basis for granting a new trial under the Thirteenth Juror doctrine. (Respondents' Br. pp. 18-22). Defendants contend Plaintiff's argument is a "stretch." (Respondents' Br. p. 19). The Court can judge this for itself.

The trial judge stated he granted the motion for new trial under the Thirteenth Juror doctrine because he was "concerned that the jury improperly handled the issue of the Defendant [nurses'] immunity under the South Carolina Omnibus Adult Protection Act. See S.C. Code Ann. §§ 43-35-25(A) & (G)." (Order of March 10, 2017, p. 2). Defendants hope this Court will ignore this statement in the order which is presented as a basis for the ruling, not some unimportant statement of "concern" as Defendants characterize it. (Respondents' Br. p. 19). See Order of March 10, 2017, p. 2.

Defendants want this Court to ignore this language in the March 10, 2017 order. However, even though the trial judge did not have to set forth his reason for granting the Defendants a new trial, he did so. And that reason demonstrates an erroneous view of the law that applies to this case. This Court should not accept Defendants' invitation to redact that language that Defendants find inconvenient, but should take the judge at his word, which reflects a misunderstanding and misapplication of the South Carolina Omnibus Adult Protection Act.

For the reasons stated in his principal brief, this Court should reverse the trial court's decision to grant Defendants a new trial because the trial court was concerned that the jury misapplied the Act.

II. PLAINTIFF PROPERLY RAISED THE ISSUES INVOLVING DEFENDANTS' IMPROPER DEFENSE

Defendants assert that the Court should not address the arguments regarding the conflict created when UniHealth's lawyers, who agreed not to "split the defense," proceeded to attempt to exonerate UniHealth by putting blame on UniHealth's employees, whom they also represented. (Respondents' Brief, p. 26). Defendants contend the issue is not properly raised by Plaintiff's Statement of Issues on Appeal. The Court should reject this argument.

Plaintiff stated the issue as follows:

Did the circuit court judge err in permitting the Defendants to present an alleged joint defense when the employer Defendant sought to relieve its liability by deflecting fault upon its own employees, who were also Defendants, by arguing these employees were of acting outside the scope of their employment?

(App. Br. p. 1). Not only does this statement expressly raise the issue of the error in permitting the alleged joint defense in light of UniHealth's strategy of blaming its employees, that argument is fairly embraced with this statement of the issue. The statement complies with Rule 208(b)(1)(B), SCACR.

Furthermore, South Carolina's courts have broadly construed the requirements that parties specifically state their issues on appeal where it is reasonably clear from appellant's arguments that the issue is in dispute. *Gibson v. Ameris Bank*, 420 S.C. 536, 542 n. 2, 804 S.E.2d 276, 279 n.2 (Ct. App. 2017); Jean Hoefler Toal, *et al.*, *Appellate Practice in South Carolina* 208 (3rd ed. 2016) (even if issue not specifically set out in the statement of issues, appellate court may nevertheless consider the issue if it is reasonably clear from the appellant's argument).

The Court should reverse the circuit court's decision to upset the jury's verdict. Even if the Court disagrees with Plaintiff's argument regarding the trial court's error in the reasons it gave for granting a new trial, the issue will necessarily arise on retrial.

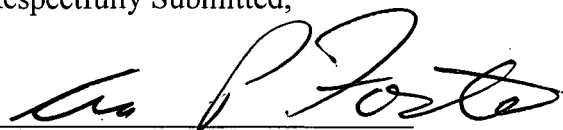
Finally, Defendants' contend that Plaintiff is "attempting to weaponize" the RPC. (Respondents' Brief, pp. 32-33). This is not true. Plaintiff simply asks the Court to instruct opposing counsel that they may not claim to be presenting a joint defense when in fact they are attempting to shield one client (the corporate defendant) from liability at the expense of counsels' other clients (the employees). Counsel has an unwaivable conflict in suggesting one client escapes liability because the other clients were acting outside the course of their employment.

Defendants attempt to bury their behavior in arguments regarding error preservation, and in asserting that the RPC have no relevance to the issues on appeal in this case; then to further deflect by contending it is Plaintiff who is disregarding the RPC. See *Weatherford v. Price*, 340 SC 572, 532 S.E.2nd 310 (SC App. 2000); *Osprey v. Cabana Ltd. P'ship*, 340 SC 367, 532 S.E.2nd 269 (2000) (demonstrating that the RPC can often be a relevant consideration by the appellate courts of this State in deciding the issues on appeal). The Court should reject Defendants' contention that this issue is not available for the Court's review.

CONCLUSION

The Court should reject Defendants' attempt to avoid the merits of this appeal by specious arguments regarding preservation. Instead, as previously argued, the Court should reverse the trial court's order and remand for entry of judgment in accordance with the jury's verdict..

Respectfully Submitted,



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Attorney for Appellants

January 11, 2018

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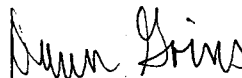
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served the Respondents with a copy of the Initial Reply Brief by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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January 11, 2018

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SC Court of Appeals

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Ralph C. Williams, Sr. and Linda Williams v. Patricia A. Johnson, Josette Peppers, and UniHealth Post-Acute Care-Orangeburg, LLC*
Case Tracking No.: 2017-000963

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Initial Reply Brief regarding the above matter. I have also enclosed a proof of service on counsel for Respondents. Please return the additional filed copy to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

With kind regards,

Yours very truly,

Daun Goins
Paralegal to Robert P. Foster

/dg

Cc: Tyler Arnold, Esq.
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