

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2017-001271
Case No.: 2015-CP-46-2454

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SC Court of Appeals

Wayne H. Copeland as the PR of the Estate of
Dorothy H. Copeland, deceased.....Appellant,

-v-

Carolina Pulmonary Physicians, P.A.....Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. **DID THE TRIAL COURT ERR IN GRANTING DEFENDANT'S MOTION FOR A DIRECTED VERDICT?**
2. **DID THE TRIAL COURT ERR IN FAILING TO GRANT PLAINTIFF'S MOTION FOR A NEW TRIAL?**

STATEMENT OF THE CASE

On August 14, 2015, Plaintiff Wayne H. Copeland, as the PR of the Estate of Dorothy H. Copeland, deceased brought this action against Defendant Carolina Pulmonary Physicians, P.A. alleging a survival action for medical malpractice that occurred on May 17, 2012, while Dorothy H. Copeland was a patient at Defendant's facility. The Jury Trial in this matter was commenced on February 13, 2017. At the close of Plaintiff's case, the Trial Judge, Hon. Brian M. Gibbons, granted Defendant's Motion for a Direct Verdict, and Judgment Order Form 4 was entered on February 15, 2017.

On February 20, 2017, pursuant to SCRCF Rule 59, Plaintiff filed a Motion for Reconsideration and Motion for New Trial. Judge Gibbons heard Plaintiff's motion on May 8, 2017. On May 12, 2017, Judge Gibbons entered a Judgment Form 4 denying Plaintiff's motions.

On May 19, 2017, Plaintiff's served the Notice of Appeal on Defendant.

FACTS

This was a medical malpractice action, whereon, Plaintiff presented the following evidence at trial and will be reflected in the Record on Appeal:

- (1) That on May 17, 2012, Dorothy H. Copeland, 90 years old, went to Defendant's medical facilities located at 124 Glenwood Drive, Rock Hill, South Carolina for the purposes of medical treatment. At the time, Mrs. Copeland was accompanied by her daughter-in-law, Deborah Copeland.

- (2) That Dorothy and Deborah Copeland were escorted to the triage room of the facility by Defendant's employee, Joan Edge, RMA.
- (3) While in the triage room, Dorothy Copeland fell and suffered severe injuries, including a fractured wrist, pelvic fracture and large hematoma, all of which required medical treatment and rehabilitation.
- (4) Plaintiff claimed that Defendant's employee, Joan Edge, RMA failed to adhere to the applicable standard of care, and that breach of care caused Mrs. Copeland to fall.

The evidence was presented through the oral testimony of the following witnesses and exhibits as will be reflected in the Record on Appeal:

- (1) Joan Edge, RMA - Defendant's employee;
- (2) Denise Taylor - Defendant's employee;
- (3) Deborah Copeland;
- (4) Dr. Michael Heinig - Orthopedic Surgeon;
- (5) Dr. Amit G. Shah - Internist and rehabilitation specialist;
- (6) Wayne H. Copeland - Dorothy Copeland's son;
- (7) Bennie Copeland - Dorothy Copeland's son;
- (8) Susan Davies, RN - Plaintiff's Standard of Care expert;
- (9) Dorothy Copeland's relevant medical records and invoices for medical treatment related to her injuries incurred in the fall;
- (10) Hand-written statement written by Joan Edge, RMA on May 30, 2012;
- (11) Incident Report prepared by Denise Taylor on May 30, 2012; and
- (12) Various photographs of the Triage Room where the fall occurred.

Of note, Dorothy Copeland died in March, 2014 after her claim had been initiated against the Defendant.

This evidence resulted in the following facts for the jury's consideration:

- (1) At the time of the fall on May 17, 2012, Dorothy Copeland was a 90 year old frail female suffering from severe COPD, which greatly limited her mobility, stability and mental status, and which required maximum assistance.
[R.pp. 196, Tr.pp. 184, ln. 16 -23; R.pp. 359]
- (2) Dorothy Copeland was a long-time patient of the Defendants, having first been treated there in 2007.
[R.pp. 73, Tr.pp. 61, ln. 2 -7]

- (3) From 2007 up to the date of the incident on May 17, 2012, Dorothy Copeland had been at Defendant's offices for an office visit at least 10 previous times and in each of those visits was accompanied by Deborah Copeland.
[R.pp. 73, Tr.pp. 61, ln. 2 -7]
- (4) Deborah Copeland was Dorothy Copeland's main caregiver and had accompanied Dorothy on all her doctor visits and was most familiar with Dorothy Copeland's health status.
[R.pp. 197, Tr.pp. 185, ln. 6 -8]
- (5) In all previous 10 visits to Defendant's facility, the Triage RMA had assumed control of Dorothy Copeland, especially in assisting Dorothy Copeland onto the weighing scale.
[R.pp. 198 - 200, Tr.pp. 186, ln. 9-11, 20- 24, Tr.pp. 187, ln. 1- 25, Tr.pp. 188, ln. 1 -2]
- (6) At the time they entered the Triage Room on May 17, 2012, Deborah Copeland had two pocketbooks on her arm and was holding an umbrella under the same arm, leaving only one arm free to assist Dorothy Copeland.
R.pp. 202 - 203, Tr.pp. 190, ln. 12- 25, Tr.pp. 191, ln. 1- 25, Tr.pp. 192, ln. 1 - 11]
- (7) At no time did Joan Edge, RMA ever ask Deborah Copeland to assist Dorothy Copeland onto the weighing scale in the Triage Room.
[R.pp. 208, Tr.pp. 196, ln. 13 - 14]
- (8) Between Deborah Copeland and Joan Edge, RMA, only Joan Edge, RMA was medically trained, especially in the area of Fall Prevention Protocols.
[R.pp. 290, Tr.pp. 278, ln. 21 - 24]
- (9) Deborah Copeland testified that upon entering the Triage Room, Joan Edge, RMA stated that "we need to get her on the scale". Deborah Copeland further testified that she assumed this meant that Joan Edge, RMA was going to get Dorothy Copeland onto the weighing scale and at that point let go of Dorothy Copeland from her one free arm.
[R.pp. 206 - 208, Tr.pp. 194, ln. 19 -25, Tr.pp. 195, ln. 1 -25, Tr.pp. 196, ln. 1 -7]
- (10) Joan Edge, RMA testified that she said "I need to get her on the scale" and then walked to the other side of the Triage Room to put down Dorothy Copeland's chart.
[R.pp. 78 - 79, Tr.pp. 66, ln. 17 - 25, Tr.pp. 67, ln. 1 - 18]

- (11) Joan Edge, RMA also testified that she saw Deborah Copeland assist Dorothy Copeland onto the weighing scale and then walk away leaving Dorothy Copeland unattended, and that in the process she saw Dorothy Copeland fall to the floor. This testimony was supported by a written statement prepared by Joan Edge, RMA on May 30, 2012 and a corresponding Incident Report prepared by Denise Taylor on May 30, 2012.
[R.pp. 79, Tr.pp. 67, ln. 7 - 18; R.pp. 149 - 150, Tr.pp. 137, ln. 1 - 25, Tr.pp. 138, ln. 1 - 10; R.pp. 360 - 361]
- (12) Deborah Copeland testified that she never assisted Dorothy Copeland onto the weighing scale.
[R.pp. 208, Tr.pp. 196, ln. 8 - 9]
- (13) Following the fall, Dorothy Copeland was eventually taken to an Orthopedic Surgeon, where she was diagnosed with a fractured wrist and pelvic fracture.
[R.pp. 213, Tr.pp. 201, ln. 17 - 20]
- (14) The injuries suffered by Dorothy Copeland required surgical intervention, a short hospital stay and a period of rehabilitation.
[R.pp. 215 - 216, Tr.pp. 203, ln. 1 - 125, Tr.pp. 204, ln. 1- 10]
- (15) As a result of her injuries and subsequent treatment, Dorothy Copeland incurred medical expenses of \$79,015.34. Additionally Dorothy Copeland's daily living activities deteriorated and were compromised.
[R.pp. 258, Tr.pp. 246, ln. 15 -22]

Expert opinion testimony was presented by Susan Davies, RN, who was admitted as an expert in Triage procedures, including but limited to, fall prevention procedures, for Registered Medical Assistants, such as Joan Edge, RMA, without objection. Ms. Davies testified to the following:

- (1) The Standard of Care (SOC) required that Joan Edge, RMA implement all appropriate precautions to prevent Dorothy Copeland from falling on May 17, 2012, especially given Dorothy Copeland's compromised medical condition.
[R.pp. 271, Tr.pp. 259, ln. 7 - 12]
- (2) The SOC responsibilities of Joan Edge, RMA began as soon as Dorothy Copeland crossed the threshold into the Triage Room.
[R.pp. 273, Tr.pp. 261, ln. 7 -11]

- (3) Joan Edge, RMA failed to adhere to the SOC by taking control of Dorothy Copeland's physical well-being as soon as they entered into the Triage Room. [R.pp. 277 - 278, Tr.pp. 265, ln. 19 - 25, Tr.pp. 266, ln. 1 - 22]
- (4) As a result of Joan Edge, RMA's failure to adhere to the SOC, Dorothy Copeland fell in the Triage Room and suffered injury. R.pp. 280 - 281, Tr.pp. 268, ln. 25, Tr.pp. 269, ln. 1 - 14]

ARGUMENTS

I. PLAINTIFF ADEQUATELY PRESENTED A PRIMA FACIE CASE FOR A MEDICAL MALPRACTICE ACTION AND THE COURT SHOULD HAVE DENIED DEFENDANT'S MOTION FOR A DIRECTED VERDICT.

In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing motions. The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. Parrish v. Allison, 656 S.E.2d 382, 388 (Ct. App. 2007). When considering directed verdict motions, the trial court does not have the authority to decide credibility issues or to resolve conflicts in the testimony or evidence. The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. Id.

South Carolina law defines medical malpractice as "doing that which the reasonably prudent or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances. S.C. Code Ann. § 15-79-110(6). In order to prove her case, Plaintiff must present evidence in the form of expert testimony that while providing medical services to a patient, the medical professional acts in her professional capacity and must meet the professional standard of care, as established by expert testimony. However, at all times, the medical professional must "exercise

ordinary and reasonable care to insure that no unnecessary harm [befalls] the patient.” Dawkins v. Union Hosp. Dist., Appellate Case No.: 2012-211938, Opinion No. 27380, *citing* Papa v. Brunswick Gen. Hosp., 517 N.Y.S.2d 782, 763-64 (App. Div. 1987).

In this matter, Plaintiff presented expert testimony through Susan Davies, RN that the Standard of Care (SOC) required Joan Edge, RMA to initiate fall prevention protocols given Dorothy Copeland’s medical condition as soon as Dorothy Copeland entered into the Triage Room. Ms. Davies further testified that Joan Edge, RMA failed to adhere to that SOC, and that failure was the cause of Dorothy Copeland’s fall. Furthermore, medical testimony from Dr. Heinig and Dr. Shah established that as result of the fall, Dorothy Copeland suffered a fracture wrist and fracture pelvis, all of which required medical treatment that was reasonable under the circumstances. The exact location of the fall (either from the weighing scale or standing next to the weighing scale) is not a element required to prove a claim for medical malpractice under the facts of this case. Plaintiff’s expert was clear that Joan Edge, RMA’s responsibility began as soon as they crossed the threshold into the Triage Room. [R.pp. 273, Tr.pp. 261, ln. 7 -11] At that point, Dorothy Copeland should never have been unattended given her medical and physical condition. A logical inference for the jury to consider is that Dorothy Copeland fell solely by the fact she was left unattended. Accordingly, Plaintiff established all the elements of a medical malpractice claim and this issue should have gone to the jury for deliberation.

Defendant’s Memorandum of Law in support of its Motion for a Direct Verdict was apparently based on the assertion that the evidence in Plaintiff’s case did not directly demonstrate that Dorothy Copeland was on the weighing scale when she fell or that Joan Edge, RMA assisted Dorothy Copeland on the scale. Whether or not Dorothy Copeland was definitively on the

weighing scale or not was not required for the jury to make its own determination from the evidence as to how and why Dorothy Copeland fell. Admittedly, Plaintiff's initial allegation in his Complaint was that Joan Edge, RMA assisted Dorothy Copeland on the weighing scale and then left her alone. Deborah Copeland testified at trial, consistent with her deposition testimony, that she "couldn't remember" if Joan Edge, RMA assisted Dorothy onto the scale. [R.pp. 228, Tr.pp. 216, ln. 16 - 25] The fact that she stated something different in her Affidavit only goes to her credibility. Deborah Copeland's credibility is a matter for the jury and not for the Court. More importantly, the expert testimony presented by Susan Davies, was not depended upon whether or not Joan Edge, RMA placed Dorothy Copeland on the weighing scale or even if Dorothy Copeland was on the scale when she fell. Ms. Davies, definitively stated the SOC required that Joan Edge, RMA take control of Dorothy Copeland from the moment she crossed the threshold into the Triage Room. [R.pp. 273, Tr.pp. 261, ln. 7 -11] Of note, Joan Edge's testimony and her written statement does state that Dorothy Copeland was on the weighing scale, albeit she did not assist her on the scale. [R.pp. 360 - 361] Joan Edge states that she saw Deborah Copeland assist Dorothy Copeland onto the scale and than leave her alone and actually saw Dorothy Copeland fall off the scale. Therefore, Defendant's own witness and employee figuratively places Dorothy Copeland on the scale. From its Motion, Defendant is seemly contradicting its own witness. Of most importance, Plaintiff's expert also testified that assuming Joan Edge, RMA's testimony was true and that Deborah Copeland assisted Dorothy Copeland onto the weighing scale, it was still a deviation from the SOC, since under the SOC, Joan Edge, RMA should have intervened and not allow Deborah Copeland to assist Dorothy onto the weighing scale. [R.pp. 290 - 291, Tr.pp. 278, ln. 10 - 25, Tr.pp. 279, ln. 1 - 25]

All of this raises factual credibility issues for the jury, and they should not be the basis for a Directed Verdict. A Directed Verdict should be granted where the evidence raises *no* issue for the jury as to the defendant's liability. Fletcher v. Medical University of South Carolina, Opinion No. 4732 *citing Guffey v. Columbia/Colleton Reg'l Hosp., Inc.* 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005), *emphasis added*. Here, there are more than sufficient issues raised that should have been submitted to the jury.

Of note, the Complaint in this matter was unverified. [R.pp. 1 - 5] The purpose of a pleading is to give fair notice to the Defendant and the Court of the allegations. Rule 8 SCRPC, mandates that a pleading contain "ultimate facts" rather than "evidentiary facts" to state a cause of action. Ultimate facts fall somewhere between the verbosity of 'evidentiary facts' and the sparsity of 'legal conclusions'. Watts v. Metro Security Agency, 346 S.C. 235, 240, 550 S.E.2d 869 (2001). In this matter, the Complaint gave fair notice of Plaintiff's ultimate claim that Dorothy Copeland fell while in the Triage Room of Defendant's facility and that the fall was due to Defendant's employee's failure to adhere to the applicable Standard of Care. The allegations in the Complaint are not evidence and should not be controlling in this matter. Only the evidence presented in the course of Plaintiff's case at trial should be considered. The Complaint in this matter should not be used to negate the evidence presented at trial simply because it refers to Dorothy Copeland being on the scale when she fell. The Complaint and discovery in this case provided sufficient information to the defendant as to the material allegations in the Complaint as to form a defense to Plaintiff's allegations. Pleadings are to be construed liberally and any conclusion of fact that may properly arise from a well pleaded fact is to be regarded as contained in the allegation. Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). Its an

elementary legal proposition now in this state (SC) that if a complaint in an action at law states a legal cause of action, and the plaintiff submits *any* evidence tending to establish the material allegations of his complaint, as a matter of law, it is the duty of the trial judge to submit the case to the jury for its determination. Huggins v. Commercial & Savings Bank, 140 S.E. 177, 188 (1927). The Complaint's material allegation is that Dorothy Copeland fell while on the Defendant's premises and that Defendant failed to adhere to the applicable SOC in assuring Dorothy Copeland's well-being.

From the evidence presented, the jury could reasonably infer any of the following:

- (1) Deborah Copeland assisted Dorothy Copeland onto the scale and then left her alone, which caused her to fall.
- (2) Deborah Copeland reasonably assumed that Joan Edge, RMA had taken control of Dorothy Copeland and was in the process of assisting her onto scale while she was putting down the pocketbooks and umbrella.
- (3) Dorothy Copeland fell before getting on the scale.
- (4) Dorothy Copeland fell off the scale.
- (5) Dorothy Copeland fell because she was left unattended in the Triage Room.
- (6) Both Deborah Copeland and Joan Edge, RMA were at fault in not protecting Dorothy Copeland.
- (6) No one was at fault for Dorothy Copeland's fall.

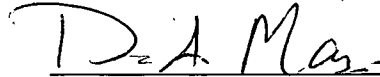
All of these are plausible inferences to be drawn from the evidence and are not based on speculation. It's the jury's sole province to determine which is the most plausible inference and to render a verdict accordingly.

CONCLUSION

Based on the foregoing, this Court should reverse the Judgment(s) of the Trial Court and remand this matter for a new trial

Respectively submitted.

January 24, 2018.



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