

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

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APR 27 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.

REPLY BRIEF

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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)." (R.p.13). 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 R.p.13.

Defendants want this Court to ignore this language in the March 10, 2017, order. However, even though the trial court 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. At that word 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 Unhealth'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.

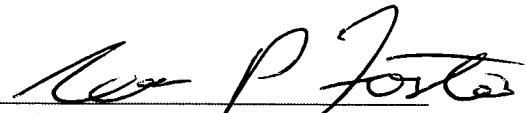
Finally, Defendants' contend that Plaintiff is "attempting to weaponize" the RPC. (Respondents' Brief, pp. 32-33). This is simply not true. What Plaintiff is asking the Court to do is to explain the importance of preventing these Defendants from giving lip service to a joint defense while shielding the company defendant at the hands of its own employees by asserting they have acted outside the scope of their employment. Such behavior is offensive at every level and the Court should not tolerate it. Defendants attempt to bury their behavior in arguments regarding error preservation, and then to deflect by contending it is *Plaintiff* who is disregarding the RPC.

The Court should reject Defendants' contention that this issue is not available for the Court's review. Should the Court affirm the trial court's decision to disturb the jury's verdict on the basis of the trial court's mistaken view over whether the jury appropriately applied statutory law, then the Court should admonish Defendants' counsel and instruct the Defendants to each obtain new representation by lawyers who will, in fact, provide a defense to each.

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. Alternatively, should the Court affirm the trial court's order then the Court should instruct that the trial court must police the so-called joint defense to preclude UniHealth from attempting to relieve its own liability at the hands of its employees, or require each party to obtain new and separate counsel.

Respectfully Submitted,



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April 19, 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that the *Brief of Appellants* and *Reply Brief* comply with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.

Respectfully submitted,

April 25, 2018



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