

AMENDED BRIEF OF APPELLANT

January 31, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case No. 2018-001842

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Case No. 2018-CP-10-1163

Diane Shaffer Goodstein, Presiding Judge
First Judicial Court Judge, Ninth Judicial Circuit
Charleston County
Charleston, South Carolina

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SC Court of Appeals

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Counsels for Respondents Dr. George H.
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P. O. Box 993, Charleston, S. C. 29402


Respondent

vs

Thelma R. Garrick, Pro Se

Appellant

AMENDED BRIEF OF APPELLANT


Thelma R. Garrick
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Notice of Amended Brief of Appeal

Case No. 2018-001842

January 31, 2019

Joseph J. Tierney, Jr. Esquire.....Respondent

For Dr. George H. Khoury and Bon

Secours St. Francis, W. Ashley

vs

Thelma R. Garrick, Pro Se.....Appellant

The Table of Contents (alphabetically arranged) regarding the dismissal of the case are based on the actions of the attorneys for the Respondents and neglect of the court in the hearing of the case.

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b.) STATEMENT OF ISSUES ON APPEAL

The attorney for Respondent filed a Motion to Dismiss fifteen days after Appellant filed a Summons and Complaint, on the grounds that Appellant accused the Respondents (doctor and hospital staff) for Professional Negligence. There was no document to support such a claim. On this fact Appellant blocked the attorney's Dismissal with a Motion to Dismiss of her own.

Attorney then filed a Motion to Dismiss with the Presiding Judge, (the Ninth Judicial Circuit Court in Charleston County) on the grounds Respondents had not been notified before filing the Summons and Complaint. This statement also was not true. Appellant had personally, loudly and angrily presented this edict at the Hospital Director's offices and doctor's staff at two separate occasions.

A Court Hearing was scheduled for July 12, 2018. Appellant filed for a continuance in a timely manner and timely received according to Postal Service with a fee attached in the amount of \$25.00. Appellant did not show up for Court for same reason she could not drive to Charleston to file Request. To this date Appellant has not even received an acknowledgment. The last correspondence or contact with the court was a notice of the Motion to Dismiss and signed by the Judge.

c.) STATEMENTS OF THE CASE

1. Appellant not a Candidate

Highly allergic to steroids including the deadening agent that was known to the Respondent prior to surgery; and many other drugs used during and after surgery. Contrary to the statement in the Operative Report I had only one shot (highly allergic reaction) and no physical therapy before surgery.

2. Appeal

Appellant chose to file on the fact the case should not have been dismissed due to a Clerk error. This is too important because of what is happening to our Senior Citizens and in the hospitals.

Appellant's Case is the absolute truth that "Respondents (not only in this hospital) are operating on unsuspecting patients for experimental reasons on things that are not FDA approved, considered off label, devices not tested and causes mechanical failure (as seen in Appellant's case); and for monetary gain (see gov. for each year of distribution) at the horrendous expense of the patients in pain, health, and inability to perform menial tasks to take care of themselves, disability. Representatives from these companies to oversee the procedures for their devices being tested are actually in the operating rooms.

Appellant was told in 2013 Respondents were experimenting on new procedures. Appellant had an honest doctor to explain he may have to use a different procedure on the second Trapeziometacarpal with tendon fusion on my left hand.

Even though Appellant told him she wanted the same procedure as the right hand, he informed her that he would have to operate according to taking an envelope in the operating room that would instruct him on how he was to proceed.

These Respondents did not discuss with Appellant the fact they were changing the type surgery procedure on 8-20-15 and change it to experimental surgeries she did not need. (Appellant loves her fellow man but not enough to be experimented on.) Appellant is filing an Appeal because Respondents premeditatedly, willingly, knowingly, with intent to harm (you had to keep a person in pain to test a Pain Distribution Port), proceeded without Appellant's knowledge or permission changing her entire life, taking away twelve good years of activity and the ability to take care of herself.

Two, because attorney for Respondents and Clerk of Court was not honest with Judge when asked about Appellant's non appearance.

Three, also to set a precedent to undo part of what our Representatives have done so that doctors and hospitals can be made more easily accountable for their actions.

3. Consent Form

Appellant's signature was obtained while under heavily medicated state, and was witnessed by a person who was not even there.

4. Doctor/Patient Relationship

Appellant's medical doctor made an appointment with Respondent for Spinal Stenosis. Surgery was performed on 4-12-2011. Several weeks later a Lumbar disk ruptured requiring another surgery on 10-20-2011 to replace disk with cadaver bones and grafting. The surgery left discomfort to the left sciatic nerve but appellant waited four years before having to see a doctor. After finding another operation was needed waited six months before setting date for surgery 8-20-2015.

5. Cover Up

Appellant getting worse instead of better decided she needed to see doctor. Six months after surgery on March 7, 2016 Respondent told appellant that he had put something in her that her body was rejecting and it needed to come out. This was the first knowledge Appellant had of a different procedure had been performed. An appointment was made to return to discuss surgery on April 4, 2016 at which time Respondent denied what he had told me on March 7th (even with a diagram by myself and him with accurate notes I recorded immediately after my visit on the 7th). We argued for about an hour, then when I would not bend on what he had previously shown me and told me, asked me to give him a date for surgery. When I did not he stormed out of the room with "Call me within 24 hours the date to do the surgery". By this time I

knew something was badly wrong and I should get a second opinion. This was my last appointment with Respondent and the last conversation was made by him to my home telephone.

The instruments Respondent showed Appellant on April 4th was for a regular fusion and the MRI was of the full spine instead of only the Lumbar spine that I had done just before the appointment of March 7th.

6. Drugged Immediately upon reaching hospital

After receiving the hospital gown and IV port a nurse came into Appellant's room and it was evident she was trying to hide the hypodermic needle she held by her side. (As Appellant is so allergic to so many of the drugs to make you comfortable before going to operating room it was known that I went into the operating room completely awake.) When she was asked about the shot before she could completely answer me she had inserted the medication and I was out. The drug is one that you can be awakened, answer questions and you are right back out but your ability to see is unclear and Appellant needed the nurse to hold my hand to sign consent just before going into operating room. This drug can also cause temporary amnesia but as Respondent told me my memory came back within a short period of time.

Drugged immediately upon reaching hospital:

Appellant was asked to initial top of Consent form but I could not read it and when I told the two nurses taking me to the operating room I was told to “just initial it”. I strained to try to read some of the handwritten words, and one word seemed to stand out, Infusion. I told them I was initialing by it because that was all I was supposed to have. Having done so I was out again. I was awakened by them arguing about who would witness my signature. Both said, “Not me” and mentioned the young ladies name who did witness my signature and was not even there. After that I did not anything until I woke up after the operation in inhumane pain.

7. Experimental Surgery without Patient’s Knowledge

The Respondent only told Appellant of one of the surgeries performed that day on March 20, 2015. He told me when he telephone me at my home that he had only put in a rod and two screws. It took over three years to find out what had been done to her body. Respondent has never discussed this major surgery to me. It has taken me over three years to learn of the extent of the surgery and not sure I know everything. I found my information from certain sources:

From Respondent - the Pain port
From Medicare records I found out about the severed spine
From a hospital in North Carolina I learned about the cage
From a doctor in Columbia I found out the rod on the pain

port is broken. Appellant has never been satisfied with not knowing why the spine was severed.

Appellant found out from hospital records and

A Representative at Medtronic that my most dreaded fear

was that the "Infuse" medication to grow bones had been

Inserted in my spine.

From x-rays and broken wrist abnormal bone growth

Is in my spine (and right arm.)

The Infuse medication that is being widely used in hospitals in South Carolina has not been researched on the risks involved. Over 6,000 patients in five states have file against the company dispensing this drug and millions of dollars have been set aside for lawsuits.

8. Expert Witness

Appellant has all MRI's, X-rays, CT scans before and after the surgery of August 20, 2015. The latest from Columbia on June 15, 2018. They are self-explanatory and can be downloaded for the jury to see. (Upon Appeal acceptance Appellant will look for retired doctors and radiologists. Do not trust someone you have to pay to be a witness because they will say what you want them to say.

9. Medtronic Representatives in Operating Room without Appellant's approval

Appellant was told that these representatives are always in the operating room training doctors and staff with new implants or devices. They were training and operating their Navigation System (Robotic Arm) that was used on Appellant. Appellant feels violated because she does not know who my body was turned

over to, what was done or by whom. Nor does she know who watched as they exposed her naked body. Appellant now lives in fear for her life. Of getting sick and being taken to a hospital who are affiliated with the Respondents. She does know they are very interested in getting this pain port out of her body.

10. Results, physical, after surgery

Appellant has been advised by at least five doctors against having any kind of operation unless it becomes life threatening. My only mode of treatment is pain medication. Appellant suffers more than she should because she does not take medication as directed because she is afraid of getting addicted. She can sit in certain chairs and get out of pain, so she sits a lot, but has to get up every 30 to 45 minutes to keep from getting stiff.

Appellant was a very active person before the surgery. She maintained all of her yard, house, painting, planting, church committees, Sunday School teacher as well as visitation of sick and shut-ins. She walked two miles every morning with her blind brother, but cannot walk 100 yards now. Standing on her feet causes pressure on all the nerves going down both sides of her hips and legs to feet. She cannot run a dust mop because when she twists her body it causes spasms in the upper and lower body that requires sitting frequently and trying again. She cannot sleep in a bed or on a couch but sleeps in a small recliner where she puts a pillow

on one side so she will not twist her body. I continue to get worse therefore having a difficult time taking care of myself. Mentally I have to fight depression and the inactivity. With a clear concise mind that never forgets and a desire to be up and active but now with a body man has almost destroyed I also fight bitterness.

Appellant is from a family of longevity. My mother lived to be 90 and died with cancer, her sister's lived to be 100, 102, brothers 90 to 100, and her mother 106. I just lost a sister who was 94 and the last of my mother's siblings who is still living is 94; usually we do not slow down until we are 90. I do not look forward to my future. If it was "old age" I could adjust but to know that man has taken at least 12 good active years of my life only makes me angry.

11. Surgeons Consulted

Second opinion neurosurgeon before he introduced himself greeted Appellant with "I thought you would be in a wheelchair, they cut you in half, split you open and altered your entire spine". He nor another neurosurgeon who studied the films declared they could not help me and advised against surgery.

The third surgeon in North Carolina, Appellant did not know they were affiliated with Charleston, got angry because I would not go back to Respondents and I would not let him test the port with steroids said I could do four things:

- Go back to Respondent who had performed operation.
- Let him give me the shot to test the port.
- Get me a lawyer to sort it out.
- Go home and live with the pain.

12. Surgeon who will Operate

Fifth neurosurgeon in Columbia was very excited and wanted to operate. His words (taken from his report to my medical doctor), "I have informed the patient and family in detail (not!) of the fact that not all medical procedures and techniques have been studied for FDA "approval", and by necessity some procedures and devices may be used in a manner that has not been studied (considered "off label"). I have specifically discussed with the patient and family the risks of worsening neurologic function, even death, infection, significant bleeding including injury to surrounding structures. These injuries may lead to additional surgery or treatment. I have informed them that artificial devices or products from animal, human, or inanimate origin may be used. I have instructed them that the devices that may be used are subject to mechanical failure and may need to be replaced or revised. I have fully described the expected procedure and some possible deviations that may occur by necessity". The operation would take seven hours. Needless to say I understood why I was advised not to have surgery. Just as Appellant would not agree to a surgery like this, nor would she have ever agreed to the experimental surgery on August 20, 2015.

13. Treatment

Pain management. Also have a strong tolerance to pain in everything Appellant does. (Sitting at this computer will take days to settle nerves down.)

14. Venue Change and Jury Trial

Appellant would like to change to a jury trial, and change venue for health reasons (there are certain days Appellant cannot leave home) to St. Matthews, South Carolina.

15. Judge

Due to a Conflict of Interest Appellant thinks it best, on her behalf, to have the Judge recused because of a family member's case some years ago where there was some animosity and disappointment. Thank you.

c.) FACTS OF THE CASE

1. Appellant has proof she was not informed of the experimental surgery on August 20, 2015.
2. Respondents records, their employees, and family members will testify to the deception, physical harm and inhumane pain the Appellant suffered and still suffers.
3. Proof of the cover-up.
4. Proof of monetary gain on the Respondents.
5. Proof Appellant was a very strong 78 year young (old) Senior Citizen with full capacity of her faculties, and actions and demeanor of a much younger person.
6. Appellant sought attorney diligently to take the case but received same answer. I did not have any money to give upfront, and was told to build a case was too expensive because of our Legislature's involvement in Medical Malpractice law.
7. Appellant, very well aware she is not an attorney and her shortcomings can prove that filing the case as is, was best because there was no negligence and the operation itself, to best of my knowledge, was perfectly performed. However, within the records a lawyer could prove Medical battery and Product Liability.
8. If Appeal is approved Appellant will seek out Retired Doctor and Radiologist through every avenue available in today's technology world.
9. Prove that it was not in the best interest of the Appellant for Respondents to give many drugs they knew she was allergic to, and that she was not a candidate for the experimental surgery.

d.) ARGUMENTS

The attorney for the Respondents misconception or misunderstanding of how the case was filed. There was no neglect and no negligence as he indicated. It is purely about "premeditatedly, willingly, knowingly with intent to harm without knowledge or permission" decided to experiment on Appellant. There can be no argument that the surgery was needed because this massive surgery had to be planned and the operating room set up well in advance. The deceit and deception, elaborate subterfuge that most of the time they would have gotten away with it with anyone who readily accepts and trusts their doctor, and accepts everything they are told. (How they thought they could get by with their actions is still beyond my comprehension. Of course, if the Respondent had not become concerned over Appellant's body rejecting the material and its effects of the implants, the cover-up would never have been realized or the Respondent breaking his Hippocratic Oath.

The next argument will probably be Respondent using Psychology to make Appellant think that her memory is bad.

The third argument will be the personal notification that I was filing against Respondents.

The fourth argument will be about trying to keep Appellant out of the hearing on July 12, 2018.

Arguments can be made on each of the Statements of the case and has been done under most items.

Arguments can be made as to why Appellant has not received requested copies of Respondents Agreement with the company who manufactured the implants.

Arguments on a request for a copy the Appellant signed with the same company for the experimental surgery. Surely a simple Standard Release form signed by Appellant under sedation would not suffice for a surgery with implants that have not been tested or approved?

Arguments regarding request for copies of monies received from said company.

(There are so many arguments and questions involved in this case it would be impossible to add them all.)

e.) CONCLUSION

The words written herein by the Appellant are true and factual. The truth and sadness of this case shows how Respondents (doctors and hospitals) take it upon themselves to do experimental surgeries without thought to their patients and the changes to their lifestyles for the rest of their lives. In Appellant's case everyone knew of the pain she would be in for the rest of my life but my life was of no consequence due to age, not taking into consideration that all people of an old age is not old. Because a person ages I have found that doctors do not take their time to value those lives that could be much better if they were treated properly.

May God have mercy on those that do evil in harming other people for their personal greed because there are consequences to our actions.

Appellant is sure there are a lot of people out there in so desperate pain that Respondents could have gotten volunteers for experimental surgery to try to get some relief. A crime does not have to be committed. This is not about success or surgery, it is about Respondents losing site of the reason they became doctors; to help not harm people.

It will be my future goal to change the laws so that even with Medical Malpractice if someone deliberately harms another it will be a Crime and go to jail, like anyone else who harms anyone. Also to present a Bill for a panel to be set up to monitor doctors, something this country does not have.

f.) Table of Authorities

To the best of my knowledge a precedent has not been set for the reason the Summons and Complaints was served for this Case.

PROOF OF SERVICE OF AMENDED BRIEF OF APPEAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

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Respondent

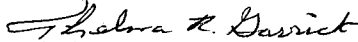
vs

Thelma R. Garrick, Pro Se

Appellant

PROOF OF SERVICE

I certify that I have served the Amended Brief of Appellant on the Honorable Julie J. Armstrong, Clerk of Court, C.P. & G.S., 100 Broad Street, Suite 106, Charleston, S.C. 29401-2258; with copies to Joseph J. Tierney, Jr. Esquire, Counsel for the Respondent, to P.O. Box 993, Charleston, South Carolina 29402, and the Honorable Diane S. Goodstein, Judge First Judicial Circuit, State of South Carolina, P.O. Box 234, St. George, S. C. 29477 by depositing a copy to each in the United States Mail, certified, prepaid on February 1, 2019 (copy enclosed).


Thelma R. Garrick
195 Crescent Oaks Ct.
Orangeburg, S. C. 29115
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February 1, 2019

February 1, 2019

Ms. V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

Reference: Thelma R. Garrick v. Dr. George H. Khoury
Appellate Case No. 2018-001842

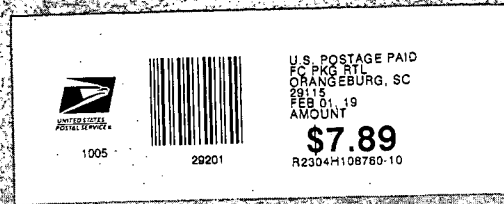
Dear Ms. Allen:

Enclosed you will find the Amended Brief of the Appellant's initial appeal and Proof of Service.

Yours truly,


Thelma R. Garrick
195 Crescent Oaks Ct.
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cc: Joseph John Tierney, Jr., Esquire



William P. Darrick
195 Crescent Oaks Ct.
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