

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Steven H. John, Circuit Court Judge

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Case No.: 2011-CP-46-00683

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Samantha Jamison, as Personal Representative of the  
Estate of Jayden Joenelle Jamison-Barber, deceased.....Respondent,

v.

Ansley L. Hilton, MD, individually and as agent,  
servant or employee of Rock Hill Gynecological  
and Obstetrical Associates, PA; Christopher B.  
Benson, MD, as agent, servant or employee of Rock  
Hill Gynecological and Obstetrical Associates, PA;  
and Rock Hill Gynecological and Obstetrical Associates,  
PA, Defendants,

**RECEIVED**

JUN 19 2014

**SC Court of Appeals**

Of whom,

Rock Hill Gynecological and Obstetrical Associates, PA, is the.....Appellant.

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SUPPLEMENTAL RECORD ON APPEAL

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P.O. Box 11785  
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Attorneys for Respondent

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Attorneys for Appellant

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**Index to Supplemental Record on Appeal**

**Pleadings:**

Plaintiff's Response to Defendant's Rule 50(e) Motion.....770

STATE OF SOUTH CAROLINA )  
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 COUNTY OF YORK )  
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 Jayden Joenelle Jamison-Barber, Deceased, )  
 )  
 Plaintiff, )  
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 Associates, P.A.; Christopher B. Benson, )  
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 Associates, P.A., and Rock Hill )  
 Gynecological and Obstetrical Associates )  
 P.A., )  
 )  
 Defendants, )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH CIRCUIT COURT

CASE NO.: 2011-CP-46-00683

**PLAINTIFF'S RESPONSE TO  
 THE DEFENDANT'S MOTION  
 TO RECONSIDER, MOTION FOR  
 JUDGEMENT  
 NOTWITHSTANDING THE  
 VERDICT, AND MOTION TO  
 ALTER OR AMNEND  
 JUDGMENT**

The plaintiff, Samantha Jamison, responds to the defendant's Motion to Reconsider; Motion for Judgment Notwithstanding the Verdict; and Motion to Alter or Amend Judgment as follows:

**A. THE MOTIONS WERE NOT TIMELY MADE.**

The defendant's motions were made after the jury was discharged on April 12, 2013. The motions were made orally and were orally denied on the record. Rule 59(e) requires that a motion to alter or amend a judgment shall be served no later than ten (10) days after receipt written notice of the entry of the order. There was no written order denying the defendant's motions, therefore the time began to run on April 12, 2013. The defendant's written motions were not filed until April 25, 2013, which is outside the ten (10) day period. Therefore the defendant's motions should be denied.

**B. A MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT IS A RENEWAL OF THE MOTION FOR DIRECTED VERDICT AND IS LIMITED TO THOSE GROUNDS.**

It is well settled law that a motion for judgment notwithstanding the verdict may be granted only upon one of the grounds of a motion for the direction of a verdict made during trial. See Glover v. North Carolina Mut. Life Ins. Co., 295 S.C. 251 (S.C. App. 1988) Government Emp. Ins. Co. v. Mackey, 260 S.C. 306 (S.C. 1973); Taylor v. Bridgebuilders, Inc., 275 S.C. 236(S.C. 1980). The Supreme Court of South Carolina has held that a motion for judgment notwithstanding the verdict is a renewal of the motion for directed verdict, and refusal is proper when the moving party presents the motion on grounds separate from those presented in support of the motion for directed verdict. Mackey, 315-316. The motion for judgment notwithstanding the verdict “simply takes us back to the point in the trial when a motion was made for a directed verdict, and is limited to those grounds.” Id at 316, (quoting Standard Warehouse Co. v. Atlantic Coast Line Railway Co., 222 S.C. 93 (S.C. 1952)); Glover, at 256; Taylor, at 238.

In the present case, Rock Hill Gynecological & Obstetrical Associates, PA, has moved for judgment notwithstanding the verdict on grounds separate from any of the multiple grounds presented in support of the motion for directed verdict. The defendant’s motion for judgment notwithstanding the verdict is limited to grounds presented in support of the motion for directed verdict. Accordingly, the defendant’s motion for judgment notwithstanding the verdict should be denied.

**C. THE DEFENDANT WAIVED ANY OBJECTION TO THE JURY VERDICT BECAUSE THE DEFENDANT FAILED TO OBJECT TO THE VERDICT FORM.**

When a party fails to object or call attention to error in a verdict form or a jury instruction until after a verdict has been rendered, the party waives such an objection and the alleged error is

not preserved for review. See Johnson v. Hoechst Celanese Corp., 317 S.C. 415 (S.C. App. 1995). Johnson v. Hoechst Celanese Corp. involved a land contamination dispute involving several properties located in the Pineforest Subdivision of Greenville County. Id at 418. The trial judge advised counsel he intended to give the jury a color coded map as a court exhibit which depicted the location of each plaintiff using the classifications argued by the parties. Id at 419. The court instructed the parties to prepare such an exhibit and corresponding verdict form. Id. The court's exhibit and verdict form were reviewed by the parties before they were given to the jury, and after specific inquiry by the court, there was no objection to them. Id. The jury returned a verdict in favor of the defense against all but two plaintiffs. Id. After the damages verdict was returned, the three landowners filed a JNOV motion, in which they allege the map and verdict form inadvertently failed to designate them as "creek plaintiffs" based on geographic location. Id at 419-420. The landowners contended the court should use its broad discretionary power to remedy this inequity because the verdicts against them were inconsistent with the other plaintiffs similarly situated. Id at 420. The JNOV motion was denied. Id. The landowners then moved for reconsideration of the denial of the JNOV or, in the alternative, a new trial. Id. This motion was then denied. Id. On appeal, the landowners contended that the trial court erred by failing to grant their motion for JNOV and that the trial court also erred by failing to grant a new trial. Id at 420-421. The landowners argue a new trial should have been granted because the verdicts were inconsistent and against the weight of the evidence. Id at 421. The Court of Appeals disagreed, and held that because they did not raise the alleged error at the first opportunity, the landowners failed to preserve any issue regarding the court's exhibit and verdict form. Id. In reaching its decision, the Court of Appeals additionally relied on Vaughn v. City of

Anderson, 300 S.C. 55 (Ct. App. 1989), holding that a party's failure to object to a jury instruction waives any alleged error in the charge.

Similar in the present case, Rock Hill Gynecological & Obstetrical Associates, PA, failed to raise any objection to the verdict form until after a verdict was rendered by the jury. The defendant had an opportunity to review the form, and failed to bring the court's attention to any issues anticipated. Accordingly, the defendant has waived any objection to the verdict form. Therefore the defendant's motion for notwithstanding the verdict, or in the alternative, the motion for new trial, should be denied.

**D. THERE WAS EVIDENCE THAT ROCK HILL GYNECOLOGICAL & OBSTETRICAL ASSOCIATES, P.A. WAS NEGLIGENT OUTSIDE OF THE NEGLIGENCE OF THE OTHER INDIVIDUALLY NAMED DEFENDANTS.**

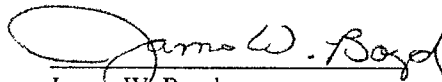
In defendant's brief the defendant refers to deposition testimony of Dr. Phillips in which the defendant allegedly impeached Dr. Phillips with prior inconsistent statements. While a transcript of the proceedings is not available at this time, assuming that Dr. Phillips did make inconsistent statements, it does not give the defendant's grounds for a new trial. The jury was able to hear the direct and the cross examination of Dr. Phillips and make a determination on his credibility based on all the evidence including any inconsistencies the defendant may have brought up.

A physician is required to use reasonable care, skill and care in determining through diagnosis the condition of the patient and the nature of the ailment. Dr. Phillips testified that Dr. Miller should have performed a non-stress test or bio-physical profile on August 25, 2008, or at the very least one week after. Dr. Phillips said if this had been done mostly likely the results would have show that there was problems with the pregnancy and the death of the child would have been avoided. It was up to the jury to weigh Dr. Phillips' opinion. Dr. Phillips also had

criticisms of the delay in the office between the time the Plaintiff arrived and the time she was seen by a physician and tests were run. These delays would not have been the fault of any of the named doctors because they had not seen the patient at that time. There was sufficient evidence to submit to the jury on the liability of Rock Hill Gynecological & Obstetrical Associates, PA. outside of the alleged negligence of the two named treating physicians.

A verdict against the master principal alone is permissible and will be sustained where the evidence is such that the jury may conclude there from that the acts were committed through the agency or some other servant not joined as a defendant. Chapman-Storm Lumber Co. v. Minnesota – South Carolina Land & Timber Co., 183 S.C. 31, 190 S.E. 117, (S.C. 1937).

FOR ALL THE ABOVE REASONS the defendants' motion should be denied.



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ATTORNEYS FOR PLAINTIFF

May 2, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )  
 )  
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Representative of the Estate of )  
Jayden Joenelle Jamison-Barber, Deceased, )  
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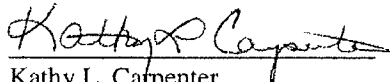
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**CERTIFICATE OF SERVICE**

Ansley L. Hilton, M.D., Individually and )  
as Agent, Servant or Employee of )  
Rock Hill Gynecological and Obstetrical )  
Associates, P.A.; Christopher B. Benson, )  
M.D., as Agent, Servant or Employee of )  
Rock Hill Gynecological and Obstetrical )  
Associates, P.A., and Rock Hill )  
Gynecological and Obstetrical Associates )  
P.A., )  
 )  
Defendants, )

I hereby certify that on May 3, 2013, I served, by placing in the United States Mail, postage prepaid, Certified Mail, Return Receipt, upon the named below, at the address below, a Plaintiff's Response to the Defendant's Motion to Reconsider, Motion for Judgment Notwithstanding the Verdict, and Motion to Alter or Amend Judgment, pertaining to the above-referenced matter.

Ashby W. Davis  
David L. Williford  
Davis & Snyder, P.A.  
5 Hawthorne Park Court  
Greenville, SC 29615

  
Kathy L. Carpenter  
Paralegal to James W. Boyd

Rock Hill, South Carolina  
May 3, 2013

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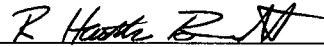
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PROOF OF SERVICE

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The undersigned, an attorney in this matter for the Appellant, certifies that I have this 19<sup>th</sup>  
**day of June, 2014**, served copies of the **Supplemental Record on Appeal** upon counsel of  
record for the Respondents by causing them to be deposited in the United States mail with  
sufficient postage affixed, addressed to: James W. Boyd, Post Office Box 36425, Rock Hill, SC  
29732 and D. Bradley Jordan, P.O. Box 11785, Rock Hill, SC 29731.



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June 19, 2014