THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appellant Case No. 2018-001842

RECEIVED
JUL 26 2019
SC Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Diane Schaffer Goodstein, Circuit Court Judge

Case No. 2018-CP-10-01163

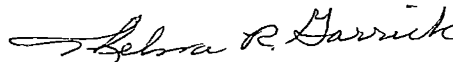
Thelma R. Garrick — Appellant

vs

Dr. George H. Khoury and
Bon Secours St. Francis West Ashley — Respondents

APPELLANT'S INITIAL REPLY BRIEF

I certify that I have served the Appellant's Initial Reply Brief to be included in the record on appeal to all parties to this matter, depositing copies in the U.S. Mail on July 25, 2019 posted to delivery to: Mr. Russell G. Hines, Esquire, Mr. Joseph J. Tierney, Jr., Esquire, and Mr. Stephen Lynwood Brown, Esquire, Attorneys at YCRLaw Firm, for the Respondents, to the following address: P. O. Box 993, Charleston, South Carolina 29402, and located at 25 Calhoun St., Suite 400 (29401), telephone number 843-577-4000.



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July 25, 2019

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

In reference to the Appellant's Initial Reply Brief regarding Case No. 2018-00-1842. A case where Respondents in the county of Charleston, Charleston, South Carolina, premeditatedly and without Appellant's knowledge or permission performed a massive experimental surgery, for gain and training purposes.

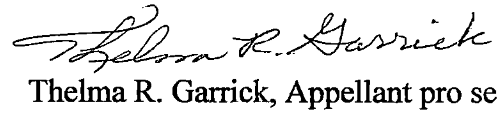
After carefully reading the Initial Brief of the Respondents I have come to the conclusion that the attorneys does not have a defense to the actions of the Respondents, and are once again trying to use subterfuge over the illegal Dismissal in the Lower Court. The Lower Court did not follow through on their responsibilities in acknowledging the requested extension for the court date of July 12, 2019, requesting a change in docket, and then failed to update the Circuit Court Judge when asked why Appellant was absent from court hearing.

Contrary to Respondents attorneys Appellant did indeed follow-up on the Order to Dismiss as copies of correspondence to them will acknowledge.

Appellant thought this matter was laid to rest with the South Carolina Court of Appeal Order dated March 6, 2019. The Order so stated, "After careful consideration and because Appellant's proof of service establishes Appellant timely served Respondents with the notice of appeal, Appellant's motion to allow the later filing of the notice is granted".

That being the case, no further edit should be necessary; however, Appellant will to the best of her ability answer truthfully items noted in this "Initial Brief of the Respondents" their attorneys have filed to refresh the memories of the case to all concerned.

Respectfully Submitted,



Thelma R. Garrick, Appellant pro se

/tg

Case No. 2018-00-1842

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STATEMENT OF THE CASE

I. The Dismissal of the case in lower court is no longer an issue as confirmed on March 6, 2019 by Order from The South Carolina Court of Appeals.

a.) The Respondents should be made aware of this Order. Appellant is also accused of not taking action after the dismissal: and has documents to prove otherwise.

b.) The attorneys of Respondents should know you do not assume! The Court erred in several areas have been documented. Again, the Dismissal in the Lower Court should no longer be an issue.

II. Any error in regards to a case clearly cannot be considered harmless.

III. Many statements given are cause and effect of the Respondents actions.

TABLE OF AUTHORITIES

Cases

To date no Medical Malpractice cases of a "surgeon or hospital" accepting money from an illegal experimental operation for a company in order to test their inventions or implants that are off-label, never been tested, and never been approved, and patient signing an incomplete release while under sedation, and without knowledge of said experimental surgery has never been filed. This case will set a precedent for the future.

Case No. 2018-00-1842

STATEMENT OF ISSUES ON APPEAL

Again, the Dismissal in the Lower Court is no longer an issue by Order of The South Carolina Court of Appeals on March 6, 2019.

Six months after Appellant's surgery of August 20, 2015 Respondent informed her when she came into his office very concerned about not improving that he knew; it was because of what he had put in her and her body was rejecting. This was discussed with her in detail and with an MRI of the lower lumbar (only). Nothing else about the massive surgery was mentioned. Appellant was so sick from taking a five day graduated steroid pills (that she is highly allergic to), and the shock of what he told her, she asked no questions. (Documentation of visit available.)

An appointment was made for April 18, 2016 to discuss removing the pain distribution port (name of port given to her via telephone by office staff). (Cover-up)

April 18th office visit was similar to 7th of March appointment with the exception an MRI of a full spine was shown with no implants of any kind, only a fusion (possibly the one I had immediately after my spinal stenosis surgery). Respondent very artfully denied what he had told her on March 7th, even had a titanium rod for a fusion laid out on the table. His psychology did not work on Appellant. Respondent then got angry and asked for a date to have the implant removed. Left the room when appellant would not answer and told her to call him back within 24 hours a date to have the port removed. This was the last visit to his office. He later contacted Appellant by telephone, after I had

asked one of his staff to give her the names of the implants, and requested that Appellant make an appointment and come to his office to talk. (Fortunately Appellant was in the yard and the message was left on her answering machine.) I am afraid of him now and would never go to him for any reason.

Appellant made an appointment with another surgeon for a second opinion to see if there was any assistance she could get to relieve some of the pain. (Remember – at this time she only knew about the Medtronic pain distribution port.) As soon as he opened the door and before he introduced himself he said, "I thought you would be in a wheel chair, they cut you in half, split you open and altered your entire spine". He had looked at all of the MRIs, X-rays, CT scan and said he could do nothing for Appellant and would not recommend surgery. (Proof of this is in the letter I wrote to him later asking him if he would send me a certified copy of his remark, which he did not acknowledge.)

I beg the Court's indulgence; this reminds me of a letter of forgiveness I wrote to Respondent when I only knew of the pain distribution port but not of his duplicity. However, it is another tool to prove the facts I have given in this case.

Sequence of events:

1. Learned of Pain port from Respondent.
2. Learned of more severe surgery from second opinion neurosurgeon.
3. Learned of severed spine from Medicare (but no implants mentioned).
4. Learned from Duke Health, Orthopedic surgeon, about something out of alignment, bulged disc, and learned about cage at this time. (See Witness affidavit).
5. Learned of the implant of the Infuse Bone graft device, a bone morphogenic protein, on January 4, 2018 from Medtronic employee. (Grows abnormal bones)
6. Learned from hospital records of Medtronic Navigation System (Robotic Arm) used for most of operation by two Medtronic Technicians who were

in the operating room, also without knowledge of Appellant. (These two men also did Training.

7. Learned that the Medtronic pain distribution port was defective on June 15, 2018 (rod securing implant has broken at spine) from third opinion Neurosurgeon of Lexington Brain and Spine Clinic.
8. Learned also from this surgeon of abnormal bone growth in spine, they are calling it a bone mine. (Appellant had to laugh when he looked at her so seriously and said "you broke it!) Not that the testing apparatus was defective.
9. Learned recently that there are terrible risks, even the Infuse bone graft device could blow up (simpler term). Also can cause anything from abnormal bone growth (already in evidence), hemorrhaging to cancer.

The remark by Respondents attorneys about an error made by the Lower Court can be considered harmless was lightly said; however, Appellant considers any error in regards to a case clearly cannot be considered harmless.

STANDARD OF REVIEW

It is very evident why the Respondents attorneys want a Dismissal. They have no defense. The Respondents know they were caught in an illegal procedure, and they have been caught receiving money to perform illegal experimental surgeries. Appellant's facts and documents are very relevant to proving all that Respondents have been accused. Appellant believes the Court will not only view the alleged facts but also the enormity of the crime committed.

Respondents did not have to take this illegal action. And certainly not a strong woman who had just begun to have a life of her own without caring for her husband for twenty-two years with primary lateral sclerosis and a son who she cared for until his death ten months after his father. She had twelve more good years (78 when this all started). The women in her family do not slow down until they reach 90 and then live to 100 as can be attested to by the other women in her family: Mother 90 (bone cancer) Aunt Mildred 102, Aunt Edith 100, Sister 94, Uncle Rob 99, grandmother 107, and Aunt Jane the last sibling is 94. Twelve good years were taken from Appellant.

Appellant believes that there are enough hurting people who have no hope who would have volunteered to such a surgery if they thought it would help them. They did not have to break the law.

The Appellant has never claimed to be or is as intelligent in the law as an Attorney. She is humbled to have gotten this far in her case against men who have no respect for the elderly. When this case comes to light she hopes this will make doctors take notice of what happens when they break the law by using unsuspecting elderly patients.

ARGUMENT

Appellant has learned in life that no error is harmless because errors change people's lives. Again, I defer to the Order of March 6th from The South Carolina Court of Appeals.

However Appellant would like to answer the question that the attorneys for Respondents indicate the reason for her asking for an extension to do research was not a valid one. The court sent Appellant a form that indicated she could ask for an extension and due to the current circumstances the extension request came at the right moment. However, the extension requests from the attorneys for Respondents could easily be questioned.

Appellant's extension request was within the timeframe given by the court and proof of certified, return receipt requested receipts by the U.S. Post office testifies to this fact. Appellant was awaiting word from the court (Had telephone Clerk of Court four times with no answer) after following the law for such a request but to this day has received no acknowledgment or receipt of her request or the money enclosed.

The research she indicated and the reason for the request for extension was that bad news just kept coming. Appellant was told of certain risks of this Medtronic Infuse Bone graft that had been implanted and the risks were from abnormal bone growth to cancer. Appellant realizes this is a cause of Respondents actions and not the reason for filing suit, but finding out something can blow up (battery operated) in your spine needed further study before going to court. Also at this time she was in no state to appear and had

to get her anger under control. She wanted as much information about the damage the Respondents had inflicted on her. Appellant believes that this was an "extraordinary circumstance" and was in her legal rights to ask for an extension. There will never be justification for what was inflicted on the Appellant.

Appellant did follow the laws instructions, but the court did not follow through at their end. It is appalling that neither attorney for Respondents or the Clerk of Court did not, when asked, inform the Judge the reason Appellant did not appear. Both had copies of the correspondence and Motion to Extend Time, #SCCA 233, request. Appellant was awaiting a reply from her request either approved or being advised to appear in court on the date set. Appellant trusts that this was not a set-up for Dismissal.

The respondent's attorney scoffs at Appellant's pain and suffering. She has proof of her pain from two well-known doctors in statements, a neurosurgeon and Orthopedic Surgeon of Duke Health, and a letter from a distinguished neurosurgeon, The Guy L. Odom Professor of Neurological Surgery, Department of Neurosurgery at DukeUniversity Health system in Durham, North Carolina. In his correspondence to Appellant he said, "From looking at your scans, I cannot tell you whether intervention will be of any benefit to you".

Second opinion neurosurgeon in a signed statement to my medical doctor said, "She should have known she would be in pain". He could not conceive of a doctor doing this to a patient without their knowledge or permission. (What was the purpose of implanting a testing prototype in for pain if you did not make sure patient would be in pain? This was a forever pain! And what patient would have agreed to such a plan?)

Orthopedic surgeon of Duke Health wanted Appellant to go back to Respondents and became angry when she told him never. One of his suggestions was "then go home and learn to live with the pain". Keyword "learn" to permanent pain. (Witness)

The diagnosis from the third neurosurgeon leaves no doubt as to the extent and damage of the surgery performed or of his desire to operate using a larger experimental seven-hour surgery. Quote, "I have informed the patient and family, by necessity some procedures and devices may be used 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 the need for 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."

Appellant would never agree to such a surgery. Just as she would never have agreed to the experimental surgery performed by the Respondents if she had known.

The Pain Clinic doctor in Orangeburg, even though I had an appointment, looked at the scans and refused to see me because he said he could do nothing for me but distribute pain medication and he had too many patients on pain medication. Therefore, Appellant has to go to Columbia pain clinic for treatment.

Appellant cannot sleep in a bed but has to sleep on a small recliner braced by a pillow so she will not twist her body in sleep, when she can sleep. All other systems of

spasms, cramps, awful pain due to pressure pressing down on all nerves in back, not being able to take her walks because she cannot stand for only short times, and so much more. The Appellant is in pain for days after preparing, typing and forwarding the court documents. She is in more pain because she cannot take the pain medication as directed because she must keep a clear mind, to function on her own, medication makes her nauseated after three days, and Appellant does not want to become addicted.

It is quiet clear that legally for all parties concerned that the testing for these implants would have required a signed agreement between Respondents and Medtronic; and if Appellant had known of this surgery she too would have had to sign agreements with Medtronic, surgeon and hospital (Respondents). Copies has been requested for any such legal documents with no success. Also since this was also for training a video of the surgery performed would have been made; also requested with no success.

Appellant does not legally see, with all signed documents, and evidence that an expert witness is required for this case but is definitely not out at this stage. (A family doctor is trying to help Appellant but is not in the position to testify for me at this point. The Court will be informed.)

Unless the attorneys for Respondents come up with something more in defense this will be my last Response to the Respondents Brief.

Thank you for your patience and consideration in the facts of this case.

CONCLUSION

Appellant has with honesty and integrity presented her case and justified her case. Appellant contends that Respondents know that the only way to win this case is to have it Dismissed and she sees no justification for this action.

The Appellant has not done everything by the guidelines but nothing illegal. I apologize for this. Also Appellant would like to add that she has no prejudice against the legal counsel for the Respondents as they do their job with the information they are presented.

I know it is not necessary but Appellant would still like to point out that patients trust their doctors and hospitals to take care of them and not harm them. They are most vulnerable under sedation with no defense mechanism. Doctors make mistakes because they are not perfect and we forgive them. However, the actions of the Respondents were not a mistake but deliberate.

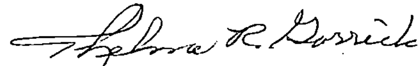
The greatest injustice would be for the Honorable Judges of The South Carolina Court of Appeals, with all of the facts in this case to Dismiss a case that is of so great a significance that will allow continued experimental operations on the elderly, for gain by such evil men will be horrendous in the coming future. Respondents are the new breed of doctors and hospitals who think that they can get by with disabling someone by working with disreputable companies who choose to in their greed go outside of the Law.

Appellant has so much information/evidence that she cannot present to the Court because it is not pertinent to the reason for this suit.

The Appellant requests that this Honorable Court affirm a future trial court date to hear and decide the verdict of the case of Appellant versus Respondents. She respects and honors the integrity of the Honorable Judges of The South Carolina Court of Appeals. If approved and permissible, Appellant asks the Court to issue subpoenas to the following Respondents and staff. Thank you.

Ms. Melanie MacDonald (Position during surgery – Circulator)
Dr. Rex Gerding, - Anesthesia
Ms. Donna Hughes – Admitting nurse
Mr. Chris Hensley – Cert Reg. Nurse Anesthesia
Ms. Summer Landers – PA
Ms. Belinda Mitchum –Roper Hospital Moncks Corner, S. C.
Dr. George H. Khoury –The Surgeon who was supposed to operate to relieve pressure on left sciatica nerve.

Respectfully submitted,



Thelma R. Garrick, pro se
This 25th day of July, 2019

/tg

cc: Mr. Russell Hines, Esquire
Mr. Joseph J. Tierney, Jr., Esquire
Mr. Stephen L. Brown
Attorneys for Respondents
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PROOF OF SERVICE

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JUL 26 2019

SC Court of Appeals

Ms. V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

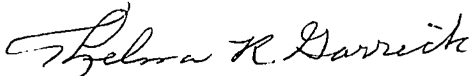
Reference: Thelma R. Garrick, Appellant vs
Dr. George H. Khoury and Bon Secours
Roper St. Francis West Ashley,
Charleston, South Carolina

Appellate Case No. 2018-001842

Dear Ms. Allen:

Thank you for your letter of July 16, 2019. Enclosed you will find the corrected caption/title to read "Appellant's Initial Reply Brief" according to Rule 267(a), SCACR.

Yours truly,



Thelma R. Garrick
Appellant pro se

/tg

cc: Mr. Russell Hines, Esquire
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Mr. Stephen Lynwood Brown, Esquire

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