THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2013-001410
Civil Action No. 2011-CP-32-02282

Tanya Bennett, as next friend of Mykelvion T.,
a minor,.. Appellant,

v.

Lexington County Health Services District, Inc.
d/b/a Lexington Medical Center,... Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT CORRECTLY HOLD THAT THE COMPLAINT IS BARRED BY THE APPLICATION OF S.C. CODE ANN. §§ 15-78-110, 15-3-40, AND 15-3-545 (2005)?

II. DID THE CIRCUIT COURT CORRECTLY HOLD THAT THERE IS SUFFICIENT EVIDENCE TO ESTABLISH THAT THE PLAINTIFF WAS ON NOTICE OF A POTENTIAL MALPRACTICE CLAIM DURING THE FIRST SIX MONTHS OF HER CHILD'S LIFE?

III. DO ADDITIONAL GROUNDS EXIST FOR SUSTAINING THE ORDER?

STATEMENT OF THE CASE

The Appellant commenced this medical malpractice action on behalf of her minor son, Mykelvion T., on June 17, 2011. (R. p. 7). In her Complaint, she alleged that the Respondent, Lexington County Health Services District, Inc. d/b/a Lexington Medical Center ("LMC"), and one of its employed physicians, Scott Augustine, M.D. ("Dr. Augustine"), are liable for a brachial plexus nerve injury sustained by her son at birth as a result of a delivery complication known as shoulder dystocia. (R. pp. 11-15, ¶¶ 15-17). LMC was served with the Summons and Complaint on September 13, 2011. It timely filed its Answer on October 13, 2011, in which it denied the material allegations of the Complaint and asserted various affirmative defenses, including that the Complaint was barred by the applicable statute of limitations. (R. p. 16). Dr. Augustine was dismissed without prejudice and his name was stricken from the caption by Order dated January 22, 2012, and entered January 25, 2012. (R. p. 1).

LMC is a "governmental health care facility" as that term is defined by S.C. Code Ann. § 15-78-30(j) (2005). Accordingly, suits against it are subject to the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 et seq. (2005) (the "Tort Claims Act"), including the two-year statute of limitations codified at S.C. Code Ann. § 15-78-110 (2005). Because the evidence revealed in discovery conclusively establishes that the Appellant was aware of her child's injury on the date of his birth—July 23, 2011—or within six months thereafter, LMC filed a Motion for Summary Judgment (R. p. 19) on December 18, 2012, on the grounds the Complaint was not filed and served within the time period prescribed by Section 15-78-110 even if the statute was tolled for seven years by S.C. Code Ann. §§ 15-3-40 and 15-3-545 (2005).

A hearing was held on LMC's Motion for Summary Judgment on March 11, 2013 before The Honorable Alison Renee Lee. (R. p. 39). After considering the law, the briefs by the parties, the arguments of counsel, and all matters submitted, Judge Lee granted the motion and signed an Order to that effect dated May 13, 2013, and entered May 15, 2013 (the "Order"). (R. p. 3). The Appellant timely served a Notice of Appeal on June 12, 2013. (R. p. 212).

ARGUMENTS

I. THE COMPLAINT IS BARRED BY THE APPLICATION OF S.C. CODE ANN. §§ 15-78-110, 15-3-40, AND 15-3-545 (2005).

The remedy provided in the Tort Claims Act "is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents[.]" S.C. Code Ann. § 15-78-20(b) (2005). The Tort Claims Act applies in this case because LMC is a "governmental healthcare facility" as that term is defined by Section 15-78-30(j). Claims brought pursuant to the Tort Claims Act are subject to the two-year statute of limitations set forth in Section 15-78-110, which provides, in pertinent part: "Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered[.]" Section 15-3-40 provides that a claimant's period of minority (i.e. the period during which he or she is under the age of eighteen years) "is not a part of the time limited for the commencement of the action[.]" Thus, that section tolls—in most cases—the Tort Claims Act's two-year statute of limitations until the claimant reaches majority. However, Section 15-3-545(D) limits the tolling period to seven years in medical malpractice cases. The circuit court held that the collective application of these three statutes bars the Complaint. (R. p. 5). That holding was not error.

The Tort Claims Act provides that its two-year statute of limitations begins running on "the date the *loss* was or should have been discovered[.]" S.C. Code Ann. § 15-78-110 (2005) (emphasis added). "Loss" is defined, in pertinent part, as "bodily injury, disease, . . . pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence[.]" S.C. Code Ann. § 15-78-30(f) (2005).

Thus, contrary to the Appellant's assertions, the "triggering event" in Tort Claims Act cases is the date the claimant first has actual or constructive knowledge of an injury. See, e.g., Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 129, 542 S.E.2d 736, 743 (Ct. App. 2001) ("We hold the clear legislative intent reveals the date of the loss, not the date of the discovery of the cause of the loss, triggers the running of the statute of limitations under the Tort Claims Act.").

In Bayle, the plaintiff brought a wrongful death and survival action against the South Carolina Department of Transportation ("DOT"), alleging that DOT was responsible for his wife's tragic death in a car accident because it negligently allowed standing water to accumulate on an interstate highway. The circuit court granted summary judgment to DOT because the action, which was filed on September 19, 1997, was not brought within two years after the accident, which occurred on October 12, 1994. This Court affirmed, finding that the plaintiff's "loss," under the clear and unambiguous language of Section 15-78-30(f), was his wife's death. Id. at 122, 542 S.E.2d at 739. Thus, the two-year statute of limitations began running on the date he learned of the accident—which was the same date as the accident itself—rather than the date he learned of the alleged cause of the accident (a "possible latent defect in the road surface"). Id. at 121, 542 S.E.2d at 739. His claim was, accordingly, barred by Section 15-78-110 when it was brought nearly three years later. Summarizing its holding, the Court wrote:

> The Tort Claims Act provides potential claimants with two years in which to file suits. This two year period begins on the date of *loss* regardless of whether the plaintiff knows the *cause* of the loss. [The plaintiff's] knowledge of his loss triggered the statute and put [him] on notice to timely investigate and determine its cause. [His] belated discovery of the cause of the loss does not entitle him to reversal of the order granting summary judgment.

Id. at 127, 542 S.E.2d at 742 (emphasis in original).

As the Appellant summarizes, the instant case "is a medical negligence case involving a brachial plexus injury sustained by Mykelvion T[.], son of Appellant Tanya Bennett, at the time of his birth on July 23, 2001." Appellant's Initial Br. at 1 (internal parentheticals omitted). It is undisputed that the child's "bodily injury" (i.e. his "loss") "was or should have been discovered" on that date. See, e.g., id. at 18 ("Appellant has never contested that Tanya was aware of the existence of some form of a problem or injury since birth[.]"). Consequently, the two-year statute of limitations began to run on July 23, 2001, regardless of whether the Appellant was then aware of the cause or extent of the "loss." After accounting for the minority tolling afforded by Section 15-3-40—as limited by Section 15-3-545(D)—the deadline for the Appellant to bring a claim for the "loss" was July 23, 2010. The Complaint, filed nearly eleven months later on June 17, 2011, was, therefore, untimely. Accordingly, the circuit court correctly held that the Complaint is barred by the collective application of Sections 15-78-110, 15-3-40, and 15-3-545. Its Order should be affirmed.

II. THERE IS SUFFICIENT EVIDENCE TO ESTABLISH THAT THE PLAINTIFF WAS ON NOTICE OF A POTENTIAL MALPRACTICE CLAIM DURING THE FIRST SIX MONTHS OF HER CHILD'S LIFE.

The circuit court found, in the alternative, that "there is sufficient evidence to establish that [the Appellant] was on notice Mykelvion suffered an injury at birth during the first six months of his life." (R. p. 5). Given the court's statement earlier in the Order that "the statute of limitations begins to run when a *cause of action* was discovered or reasonably ought to have been discovered by exercise of reasonable diligence," id. (emphasis added), the Respondent believes the circuit court's intent was to find that the

Appellant was on notice of a potential malpractice claim by the time her child was six months old. Regardless, any error by the circuit court on this point was harmless because the record evidence points to only one reasonable conclusion: that the Appellant was on notice no later than January 11, 2002, that a claim against LMC *might* exist. See, e.g., Dean v. Ruscon Corp., 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996) ("[T]he injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party **might** exist.") (italics in original; bold added). Thus, as explained below, the Complaint is time-barred even if one does not apply the unique analysis required in Tort Claims Act cases (discussed in Section I, supra).

Pursuant to the discovery rule, "[t]he statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he *might* have a claim against another party[.]" Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995) (emphasis added). The discovery rule does not require absolute certainty that a cause of action exists before the statute of limitations begins to run. Bayle, 344 S.C. at 126, 542 S.E.2d at 741. See also Snell v. Columbia Gun Exch., Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981) (holding that the statute of limitations begins to run when "the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party *might* exist" and "not when advice of counsel is sought or a full-blown theory of recovery developed") (emphasis added). "Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial." Dean, 321 S.C. at 364, 468 S.E.2d at 647.

Applying these principles, this Court, in Knox v. Greenville Hospital System, 362 S.C. 566, 608 S.E.2d 459 (Ct. App. 2005), affirmed the circuit court's grant of summary judgment to a public hospital on statute of limitations grounds. The plaintiff asserted a medical malpractice claim against the hospital on May 8, 2002, for allegedly causing a permanent injury to his radial nerve when an intravenous needle was improperly inserted into his wrist on May 2, 2000. The Court found that the plaintiff was or should have been aware of his potential claim on the date of his injury because he "knew he had experienced pain upon injection, that the pain was not a normal consequence of an I.V. administration [he had received 'plenty of I.V.s before'], that the nurse had hit a nerve, and that the nerve was the 'wrong thing' to hit." Id. at 571, 608 S.E.2d at 462. The Court further found that "[t]he exercise of reasonable diligence under these facts would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against the Hospital *might* exist." Id. (emphasis added) (citations and quotations omitted). Notably, the fact that the plaintiff "did not know the extent of his injury on May 2, 2000" was immaterial. Id. at 572, 608 S.E.2d at 462.

Similarly, in Young v. S.C. Department of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999), the plaintiff brought a negligence action against the South Carolina Department of Corrections ("DOC") on July 2, 1996, for allegedly causing delays in the diagnosis and treatment of an eye injury. In affirming the circuit court's grant of summary judgment to DOC, this Court found that the two-year statute of limitations began running on May 11, 1993, and thus the action was untimely. Id. at 720, 511 S.E.2d at 416. The Court noted that the plaintiff had been told on May 5, 1993, and again on May 11, 1993, that a large amount of scar tissue had built up inside his eye and found that

this triggered the running of the statute of limitations. Id. at 721, 511 S.E.2d at 417. The Court held that, like the plaintiff in Knox, the plaintiff was not required to know the full extent of his injury in order for the statute of limitations to begin running. See id. ("[The plaintiff] was not required to know the sight in his right eye was *permanently* lost to be put on notice the [DOC] had caused him injury through the delay in diagnosis and treatment.") (emphasis in original).

In the instant case, the following undisputed facts are pertinent to the issue of whether the Appellant, like the plaintiffs in Knox and Young, was on notice of a potential malpractice claim prior to expiration of the statute of limitations.

- According to the Appellant, Dr. Augustine told her that he had injured the child's arm during delivery, stating: "Oops, I hurt his arm." (R. p. 111, l. 7-9 & 22-23; R. p. 165, l. 10-13). Significantly, this statement was made to (or purportedly heard by) a person—the Appellant—who had given birth twice before without any problems and did not expect her third son to sustain a birth injury. (R. p. 105, l. 21 – p. 106, l. 7).

- On August 21, 2001, approximately one month after the delivery, the Appellant called Dr. Augustine's office seeking an orthopedic referral for her son because "[h]is arm was injured during delivery." (R. p. 199).

- The Appellant was referred to Midlands Orthopaedics, where an electromyogram (EMG) was performed on the child on October 29, 2001. The Appellant testified that, following the EMG, a doctor told her the child's injury was permanent and that he would never use his arm. (R. p. 173, l. 21 – p. 174, l. 9). She also testified that, when her son was about three months old, a doctor told her that there would be no regeneration and that the child "wouldn't have any function." (R. p. 100, l. 16-20; R. p. 107, l. 19 – p. 108, l. 4).

- On January 11, 2002, the Appellant signed an Authorization and Consent to Release Medical Information authorizing attorney David B. Betts to receive medical records regarding treatments received by her and her son. (R. p. 201). The Appellant testified that her purpose in consulting Mr. Betts was "to inquire about the brachial plexus injuries to see if there was anything I could actually do[.]" (R. p. 118, l. 21 – p. 119, l. 2).

Though the Appellant makes several unconvincing arguments to the contrary, "[t]hese facts, actually known by [the Appellant], were sufficient to put a person of common knowledge and experience on notice that some claim against [LMC] *might* exist." Wilson v. Shannon, 299 S.C. 512, 515, 386 S.E.2d 257, 259 (Ct. App. 1989) (emphasis added).

The Appellant relies on the fact that Dr. Augustine, at his deposition, denied saying "oops, I hurt his arm."[1] However, Dr. Augustine's testimony is irrelevant because the Appellant believed Dr. Augustine said "oops, I hurt his arm" and testified to that effect three times during her deposition. (R. p. 111, l. 7-9 & 22-23; R. p. 165, l. 10-13). A person of common knowledge and experience hearing those words—or at least believing themselves to have heard those words—would be on notice that a claim against Dr. Augustine and/or his employer *might* exist. This is particularly so when the person, like the Appellant, has previously undergone two uneventful deliveries, thus equating the person to the plaintiff in Knox, who knew from experience that the normal administration of an I.V. does not involve excruciating pain. The Appellant knew from her prior delivery experiences that attending physicians typically do not injure the child's arm during delivery, much less verbally admit doing so.

Regarding her testimony concerning the EMG performed on her son on October 29, 2001, the Appellant submitted an affidavit to the circuit court purporting to "clarify" that testimony. (R. p. 215). As noted above, she testified on deposition that doctors told her shortly after the EMG that there would be no regeneration, that her son "wouldn't have any function," that the injury was permanent, and that her son would never use his arm. (R. p. 100, l. 16-20; R. p. 107, l. 19 – p. 108, l. 4; R. p. 173, l. 21 – p. 174, l. 9). Just

[1] Dr. Augustine's deposition transcript was not presented to the circuit court and, therefore, is not included in the Record on Appeal pursuant to Rule 210(c), SCACR.

in time for the summary judgment hearing, however, the Appellant purportedly determined that she is now uncertain when she learned that her son's injury was permanent and submitted an affidavit so stating. (R. p. 215). However, an affidavit which is submitted to contradict a party's own prior sworn statement does not create an issue of fact for purposes of summary judgment. Cothran v. Brown, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004). See also Barwick v. Celotex Corp., 736 F.2d 946, 960 (4th Cir. 1984) ("A genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the plaintiff's testimony is correct."). Accordingly, the Appellant is bound by her deposition testimony that she understood her son's injury was permanent when he was approximately three months old.

In an attempt to marginalize the significance of the medical records authorization she gave to attorney David B. Betts on January 11, 2002, the Appellant claims the record does not contain "any evidence of the purpose for which the medical authorization was signed." Appellant's Initial Br. at 6. However, as quoted above, the Appellant testified that she consulted Mr. Betts "to see if there was anything [she] could actually do" about her son's injury. (R. p. 118, l. 21 – p. 119, l. 2). In the context of an attorney consultation, the only reasonable conclusion which can be drawn from this testimony is that the Appellant believed she *might* have some legal recourse for her son's injury and that she wanted legal counsel to investigate. See, e.g., Austin v. Conway Hosp., Inc., 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987) (finding that the plaintiff "obviously knew some claim might exist at the time she consulted [a] lawyer"). Under the discovery rule, the statute of limitations was triggered no later than the date of this consultation, i.e. January 11, 2002.

Finally, the Appellant relies heavily on the unsupported proposition that brachial plexus injuries are not actionable until they are determined to be permanent.[2,3] In reliance on this proposition, she attempts to establish that she thought her son's injury was only temporary until sometime after June 17, 2002 (nine years prior to the date the Complaint was filed). For example, she asserts that "Dr. Augustine informed [her] that her Son's injury was because of his large size" and that "the injury was temporary and would heal on its own." Appellant's Initial Br. at 4. See also id. at 17 ("Dr. Augustine told Tanya the injury was only temporary."). However, the Appellant fails to acknowledge her testimony that Dr. Augustine told her "injuries like this one usually heal fully *in about two weeks*[.]" (R. p. 112, l. 4-8) (emphasis added). Nor does she acknowledge her testimony that, when her son's injury did not heal within two or three weeks, she understood that the injury was not going to be one of the ones Dr. Augustine allegedly described. (R. p. 112, l. 13-17). The Appellant also relies on the testimony (via affidavit) of Dr. David Redmond that it would not have been possible to determine whether the child's injury was permanent until he was at least eighteen to twenty-four months old. (R. p. 214). However, even if Dr. Redmond's assertion is correct, it is wholly irrelevant in a case where: (1) the Appellant understood her attending physician to have acknowledged responsibility for a birth injury on the date of birth; (2) the

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2 This proposition is unsupported by record evidence because the medical articles cited in the Appellant's Brief were not presented to the circuit court. Therefore, like Dr. Augustine's deposition transcript, they are not included in the Record on Appeal pursuant to Rule 210(c), SCACR.

3 In support of this proposition, the Appellant cites Grillo v. Speedrite Products, Inc., 340 S.C. 498, 532 S.E.2d 1 (Ct. App. 2000), and several out-of-state cases cited therein. However, those cases are easily distinguishable because they were not medical malpractice cases, but rather latent occupational disease cases requiring an analysis of when an employee's symptoms become severe enough to trigger the running of the applicable statute of limitations under the discovery rule. On the other hand, medical malpractice cases in South Carolina have rejected the proposition. See, e.g., Young, 333 S.C. at 721, 511 S.E.2d at 417 (finding that the plaintiff was not required to know he had suffered a permanent injury to be put on notice of a potential claim); Dean, 321 S.C. at 364, 468 S.E.2d at 647 ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial.").

supposedly "temporary" injury had not healed within the time period during which the Appellant was allegedly told by her physician that it would heal; (3) the Appellant gave sworn testimony that she was told, among other things, that the injury was permanent when the child was three months old; and (4) the Appellant sought the advice of an attorney when her child was six months old to "see if there was anything [she] could actually do" about the injury and authorized the attorney to obtain her son's medical records.

Clearly, under the undisputed facts of this case, "[n]o genuine issue of material fact exists as to whether the two year statute of limitations precludes this action." Young, 333 S.C. at 721, 511 S.E.2d at 417. The circuit court's Order should, therefore, be affirmed.

III. ADDITIONAL GROUNDS EXIST FOR SUSTAINING THE ORDER.

In addition to those listed above, there are at least two other grounds upon which the Order may be affirmed. See Rule 208(b)(2), SCACR ("Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)."); Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (holding that "a respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court"). Those grounds are discussed below.

A. The six-year statute of repose provision within S.C. Code Ann. § 15-3-545(A) (2005) absolutely bars any claims for birth injuries to the child commenced after July 23, 2007.

In a sense, the arguments set forth in Sections I and II of this brief are moot because any claim arising out of an alleged birth injury to the Appellant's son was absolutely barred after the child's sixth birthday—July 23, 2007—pursuant to the six-year statute of repose codified within Section 15-3-545(A). That section provides, in pertinent part:

> In any action . . . to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider . . . acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, *not to exceed six years from date of occurrence*, or as tolled by this section.

S.C. Code Ann. § 15-3-545(A) (2005) (emphasis added). This six-year period "constitutes an outer limit beyond which a medical malpractice claim is barred, regardless of whether it has or should have been discovered." Hoffman v. Powell, 298 S.C. 338, 339-40, 380 S.E.2d 821, 821 (1989). It is an "absolute outer limit" and applies to "*any* medical malpractice action," including those brought against government entities under the Tort Claims Act. Kerr v. Richland Mem'l Hosp., 383 S.C. 146, 147-48, 678 S.E.2d 809, 810 (2009) (emphasis in original).

The Supreme Court expounded on the nature of statutes of repose in Capco of Summerville, Inc. v. J.H. Gayle Construction Co., 368 S.C. 137, 628 S.E.2d 38 (2006). The court wrote:

> A statute of repose creates a *substantive right* in those protected to be free from liability after a legislatively determined period of time. A statute of repose is typically an absolute time limit beyond which liability no longer

> exists and *is not tolled for any reason* because to do so would upset the economic balance struck by the legislative body. A statute of repose is a statute barring any suit that is brought after a specified time since the defendant acted even if this period ends before the plaintiff has suffered a resulting injury. Statutes of repose by their nature impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists. . . . [A] statute of repose differs from a statute of limitations. The expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those already accrued.

Id. at 142, 628 S.E.2d at 41 (emphasis added) (citations and quotations omitted). Accordingly, any claim arising out of a birth injury to the Appellant's son was extinguished on July 23, 2007, pursuant to Section 15-3-545(A), and LMC has had a substantive right to be free from liability since that date. Therefore, the Order should be affirmed.

The Appellant may point to the last clause of Section 15-3-545(A)—"or as tolled by this section"—and argue that the statute of repose is tolled for minors' claims. However, the tolling language clearly applies only to the statute of limitations portion of Section 15-3-545(A). The pertinent portion of that section provides that a medical malpractice action

> must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

S.C. Code Ann. § 15-3-545(A) (2005). In other words, the section sets alternate time limits of: (a) three years from the date of the treatment, omission, or operation unless tolled by Section 15-3-545(D); or (b) three years from the date of actual or constructive discovery unless tolled by Section 15-3-545(D). However, in no event is the time limit longer than six years from the date of the occurrence. This is consistent with the

principle that a statute of repose is an "absolute time limit" which "is not tolled for any reason[.]" Langley v. Pierce, 313 S.C. 401, 404, 438 S.E.2d 242, 243 (1993) (citations and quotations omitted). See also Calaway ex rel. Calaway v. Schucker, 193 S.W.3d 509, 517 (Tenn. 2005) (holding that "the plaintiff's minority does not toll the medical malpractice statute of repose"); Budler v. Gen. Motors Corp., 689 N.W.2d 847, 851 (Neb. 2004) (holding that a statute of repose was "not tolled by a person's status as a minor"); Albrecht v. Gen. Motors Corp., 648 N.W.2d 87, 95 (Iowa 2002) (holding that a statutory minority extension provision did not extend a statute of repose).

B. In the alternative, the six-year statute of repose provision within S.C. Code Ann. § 15-3-545(A) (2005) is extended to seven years for claims brought by minors.

At most, Section 15-3-545(D) can be said to extend the statute of repose to seven years from the date of the occurrence for claims brought by minors, which in this case would mean the Complaint was barred after July 23, 2008. Any other conclusion would deprive LMC and other medical providers of their legislatively granted substantive right to be free from liability after a certain period of time and would "upset the economic balance struck by the [General Assembly]." Capco, 368 S.C. at 142, 628 S.E.2d at 41. As one court put it: "[T]he legislature attempted to balance the rights of injured persons against the exposure of health care providers to liability for endless periods of time. . . . This Court is not authorized to second-guess the legislature's judgment." Kush v. Lloyd, 616 So. 2d 415, 421-22 (Fla. 1992).

CONCLUSION

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. . . . Statutes of limitations are, indeed, fundamental to our judicial system.

Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009) (citations and quotations omitted). Statutes of limitation (and repose) are particularly important in Tort Claims Act cases. See, e.g., S.C. Code Ann. § 15-78-20(f) (2005) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State."); Unisys Corp. v. S.C. Budget & Control Bd., 346 S.C. 158, 167, 551 S.E.2d 263, 268 (2001) ("[A] statute waiving the State's immunity from suit, being in derogation of sovereignty, must be strictly construed."); Bayle, 344 S.C. at 123, 542 S.E.2d at 740 ("Provisions of the Tort Claims Act establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting the liability of the State.").

In this case, the applicable limitations/repose period expired on or before either July 23, 2007; July 23, 2008; July 23, 2010; or January 11, 2011. The Appellant's right to bring a claim for a birth injury to her son was plainly extinguished well before she filed her Complaint on June 17, 2011. Accordingly, and for the reasons explained herein, the circuit court committed no error in granting the Respondent's Motion for Summary Judgment. The Respondent, therefore, respectfully requests that this court affirm the circuit court's Order.

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May 23, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2013-001410
Civil Action No. 2011-CP-32-02282

Tanya Bennett, as next friend of Mykelvion T.,
a minor,... Appellant,

v.

Lexington County Health Services District, Inc.
d/b/a Lexington Medical Center,.. Respondent.

CERTIFICATE OF COUNSEL

I, the undersigned attorney with Barnes, Alford, Stork & Johnson, LLP, do hereby certify that the enclosed **RESPONDENT'S FINAL BRIEF** complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, the undersigned attorney with Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on May 23, 2013, served a copy of the enclosed **RESPONDENT'S FINAL BRIEF** upon all other parties, through their attorney(s) of record, by depositing copies of the documents in the United States Mail, first class, sufficient postage prepaid, with the return address(es) clearly noted, addressed as follows:

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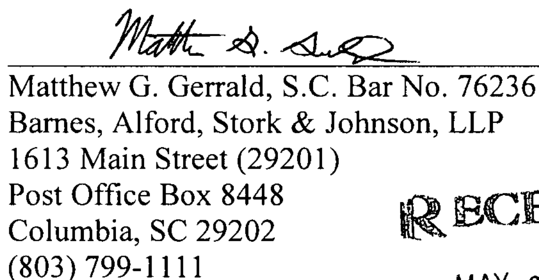

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