

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Jocelyn Newman, Circuit Judge

Richland (2017CP4003520)

Appellate Case No.: 2020-000160

RECEIVED
MAY 27 2020
SC Court of Appeals

Clayton M. Somers,.....Appellant,

v.

Darrell W. Harper,.....Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. The trial court properly awarded the UIM insurance carrier a setoff from the jury verdict in the amount of the policy limit where the insurance carrier, pursuant to a previously reached settlement agreement, had paid funds allocated for Plaintiff's sole use and benefit.

STATEMENT OF THE CASE

This case is about a motor vehicle accident that occurred on July 13, 2016. Respondent's vehicle collided with Appellant's vehicle on or about 3:23pm while traveling east on Killian Road in Richland County, South Carolina. At the time of the accident, Appellant was 17 years old.

On November 14, 2016, a settlement agreement between Respondent and Appellant was reached wherein Respondent's liability insurance carrier tendered \$25,000 for Plaintiff's injuries. Specifically, due to Plaintiff's standing as a minor, the money was tendered to Stacey A. Somers as Guardian ad Litem for Plaintiff. In pertinent part, the settlement agreement states:

“...to the minor Plaintiff, Clayton Matthew Somers, the total sum of TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00) DOLLARS to be paid by or on behalf of [sic] Darrell W. Harper in the following manner:

A. TEN THOUSAND FOUR HUNDRED TWENTY-THREE AND 92/100 (\$10,432.92) DOLLARS to Stacy [sic] Somers, as Guardian ad Litem for Clayton Matthew Somers, for her minor child's sole use and benefit; and

B. FOURTEEN THOUSAND FIVE HUNDRED SEVENTY-SIX AND 92/100 (\$14,576.08) DOLLARS to Stacy [sic] Somers for medical expenses past and future, incurred for the treatment of her minor child,...

(Order Approving Settlement, November 14, 2016).

The settlement was approved by the Honorable L. Casey Manning on December 16, 2016.

Id.

Appellant turned eighteen in February 2017 and filed a lawsuit against Respondent on June 6, 2017. (Complaint). Allstate Fire and Casualty Insurance Company appeared in the name of the Respondent pursuant to its contract for underinsured motorist coverage. *Id.*; See S.C. Code Ann. § 38-77-160 (1994). The matter proceeded to a jury trial before the Honorable Jocelyn

Newman on November 18, 2019 and concluded one day later on November 19, 2019. At trial, Plaintiff sought recovery for pain and suffering, loss of employment of life, scarring and disfigurement, mental suffering and permanent injury, and future damages. While the value of medical bills was not presented as evidence, evidence was presented that the medical bills were incurred by Appellant's guardians. (Transcript, line 24). Neither Appellant nor Respondent objected to the jury charge. (Transcript pp. 127, line 23–p.128, line 2).

The jury returned a verdict in the amount of \$60,000. (Verdict Form). During post-trial motions, Appellant moved for a setoff in the amount of \$10,423.92. Appellant argued the instant case is “akin to the *Riley v. Ford*¹ case where it's an allocation to the wrongful death and survival action” and that *Riley v. Ford* was directly, if not almost directly, on point. (Transcript p. 128, ll.15–17; p. 131, ll.7–15).² Ultimately, the court disagreed with Appellant's legal reasoning and denied the motion. The court ruled in favor of Respondent and entered judgment in favor of Appellant in the amount of \$35,000, applying a setoff for the full \$25,000 amount paid by Respondent for the liability policy limit.

Thereafter, Appellant filed two additional post-trial motions; a Motion for Costs and a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCACR. (Motion for Costs; Motion to Alter or Amend Judgment). The court granted Appellant's Motion for Costs and denied Appellant's Motion to Alter or Amend Judgment. *Id.* This appeal followed. (Notice of Appeal).

¹ *Riley v. Ford Motor Co.*, 414 S.C. 185, 777 S.E.2d 824 (2015).

² Interestingly, Appellant appears to abandon this argument on appeal. However, the underlying decision and order Appellant now appeals was based, at least in part, on the oral argument Appellant made to Judge Newman during the post-trial motion proceedings. (Transcript pp. 128–36).

STANDARD OF REVIEW

This appeal involves questions of law. Accordingly, *de novo* is the applicable standard of review. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.Ew.2d 40, 41 (2008) (quoting *Catawba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)).

ARGUMENT

THE TRIAL COURT PROPERLY FOUND RESPONDENT HAS PAID \$25,000—THE LIABILITY POLICY LIMIT—FOR THE SOLE USE AND BENEFIT OF APPELLANT, AND THEREFORE, A SETOFF FOR \$25,000 IS PROPER AND SHOULD BE UPHELD.

Respondent asserts the factual circumstances of this case present a legal issue without clear precedent in South Carolina. The question in this case addresses what measure of liability coverage has not been exhausted in a previous settlement, if any. Here, Respondent contends the full measure of liability was exhausted in the previous settlement either directly to, or directly for the benefit of the Appellant, and the court properly awarded a setoff in the amount of \$25,000. Further, a parent's statutory responsibility to furnish medical treatment for a child does not negate the result that an injured child benefits from medical care and services rendered. *See* S.C. Code Ann. §§ 63-5-20–63-5-30 (2010).

Appellant improperly asserts Respondent is not entitled to a “[setoff] of benefits paid to a third party” and to reduce Appellant’s recovery by the additional monies paid by Respondent for Appellant’s benefit would be “[penalizing]” Appellant “for proceeds that he did not request, did not receive, and could not legally claim.” (Appellant’s Initial Brief, pp. 6–7). However, but for Appellant’s age at the time of the accident, Appellant’s mother would not have been responsible for Appellant’s medical bills. Essentially, Appellant’s mother—like any Guardian ad Litem—was stepping into the shoes of the minor to facilitate payment for medical treatment due to her statutory obligation to do so. *See* S.C. Code Ann. § 63-5-20(A) (2010). It is wholly inaccurate to allege

Appellant did not “receive” or “benefit” from the proceeds which were allocated to his guardian; indeed, Appellant is precisely who received the benefits of the medical services and care rendered.

Moreover, the plain text of the Settlement expressly states a *total sum of twenty-five thousand dollars* would be paid by Respondent *for Appellant* (Order Approving Settlement, November 14, 2016). Contrary to Appellant’s argument regarding penalization, failing to award Respondent a setoff in the full amount paid (\$25,000) for the sole use and benefit of Appellant would be penalizing Respondent based on Appellant’s status as a minor and the accompanying statutory requirements of his guardians to pay for necessary medical care. *See* S.C. Code Ann. § 63-5-20(A) (2010). Respondent, by and through his insurance carrier, respectfully submits he is entitled to credit for the full amount of benefits paid to Appellant, irrespective of the means through which the funds were applied.

Appellant points to *Kizer v. Kinard*³ for being “consistent with the policy of avoiding double recovery to the Plaintiff while declining to [setoff] amounts paid to third parties unrelated to the jury verdict.” (Appellant’s Initial Brief, p.8). Again, Appellant’s *legal* guardian who was required to furnish medical care—and as such, would be the conduit through which medical bills were paid—cannot accurately, or in good conscience, be characterized as a “third party unrelated to the jury verdict.”

While Respondent concedes there are some factual similarities between the instant case and *Kizer v. Kinard*, the two cases are also significantly distinct. A spouse’s loss of consortium claim is categorically distinct and secondary to the damages incurred to an injured spouse.⁴ On the

³ *Kizer v. Kinard*, 361 S.C. 68, 602 S.E.2d 783 (Ct. App. 2004).

⁴ A loss of consortium claim has an independent status and may be separable from the claim of an injured spouse. *See Kinard*, 361 S.C. at 72, 602 S.E.2d at 784.

contrary, while the financial expense is incurred by a parent, the recipient of the medical services and care preceding a medical bill is experienced by the injured child. Therefore, a loss of consortium claim is inherently more separate and divisible between two spouses than that of medical care being offered to the party who was directly injured by a tortfeasor. In this case, the injured party also happens to be a child who is legally unable to pay for his medical services.

In other words, in *Kizer v. Kinard*, there was a very clear division between the husband's monetary benefits awarded and the wife's monetary benefits recouped for her injury. Here, it is also clear that all \$25,000 of Respondent's previous payments were for the sole benefit and use of Appellant, not Appellant's guardian, by virtue of the fact Appellant himself received the medical care. Whereas in *Kizer v. Kinard*, the UIM liability carrier was entitled to a setoff for the full amount of money paid to the plaintiff, Mrs. Kizer, here, the UIM liability carrier is also entitled to the full amount of money paid to the plaintiff. The means by which the settlement funds were disbursed is of no legal import with respect to the propriety of the setoff in this case. Therefore, Respondent is entitled to a setoff for the full amount paid to Appellant as expressly detailed in the original settlement. (Order Approving Settlement, November 14, 2016).

CONCLUSION

For the foregoing reasons, Respondent respectfully submits the trial court's ruling awarding Appellant \$35,000 in damages was proper and kindly asks this honorable Court to affirm its judgment.

[Signature page to follow]

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Brown', is written over a horizontal line.

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May 26, 2020

Columbia, South Carolina

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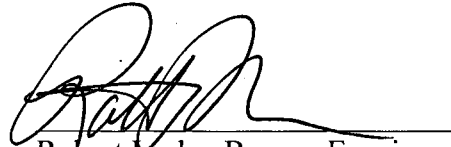
Clayton M. Somers,.....Appellant,

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Darrell W. Harper,.....Respondent.

CERTIFICATE OF COUNSEL

Respondents, by and through their undersigned counsel, certify that **Respondent's Initial Brief** complies with Rule 208(b)(2), SCACR.



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Appellate Case No.: 2020-000160

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PROOF OF SERVICE

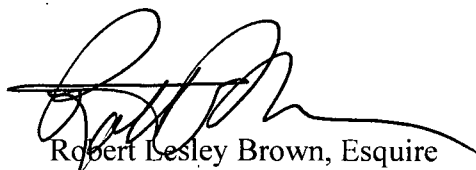
Pursuant to Rule 262(b), SCACR, I certify I have properly served **Respondent's Initial Brief, Certificate of Compliance, and Designation of Matter** to be Included in the Record on Appeal, by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses on May 26, 2020:

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
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May 26, 2020

Via United States Mail

The Honorable Jenny Abbott Kitchings
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P.O. Box 11629
Columbia, South Carolina 29211

Re: Clayton M. Somers v. Darrell W. Harper (UIM)
C/A No.: 2017-CP-401-03520
Claim No.: 04200996059; DOL: 7/13/2016
WJC&B File No.: 0222.00312

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SC Court of Appeals

Dear Ms. Kitchings:

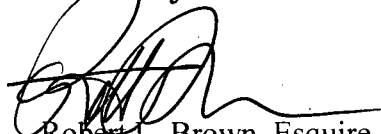
Pursuant to Rules 208(2) and 262(b), SCACR, please find enclosed for filing one (1) original and two (2) copies of **Respondent's Initial Brief, Designation of Matter, Certificate of Counsel, and Proof of Service** for the same in the above-referenced matter.

By copy of this letter and enclosures to Appellant's counsel, we are serving a copy of our **Initial Brief, Designation of Matter, and Certificate of Counsel** upon them as indicated by the attached **Proof of Service**.

I have also enclosed a postage-paid envelope, and I would greatly appreciate it if you would return a clocked copy of the same back to me. If you have any questions or concerns in the interim, please do not hesitate to contact me. Thank you for your consideration.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


Robert L. Brown, Esquire
Attorney for Respondent

Enclosures:

Respondent's Initial Brief

Designation of Matter

Certificate of Counsel

Proof of Service

cc:

Graham L. Newman

W. Hugh McAngus, Jr.

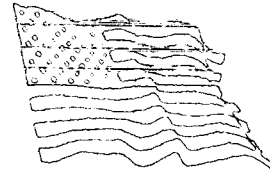
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