

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Judge

Case No. 2020-000160

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Jun 25 2020

SC Court of Appeals

Clayton M. Somers,

Appellant,

v.

Darrell W. Harper,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

Graham L. Newman
W. Hugh McAngus, Jr.
James D. George, Jr.
Chappell Smith & Arden, P.A.
Post Office Box 12330
Columbia, South Carolina 29211
(803)929-3600

Attorneys for Appellant

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ARGUMENT

I. Stacy Somers's Liability for Her Minor Child's Medical Expenses Is Irrelevant to the Set Off Analysis

The full thrust of Respondent's brief attempts to distinguish Kizer v. Kinard, 361 S.C. 68, 602 S.E.2d 783 (Ct. App. 2004) by arguing "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." (Respondent's Brief at 6) Whether the minor child benefitted from the financial expense incurred by his mother, however, is irrelevant to the set off analysis which seeks to "prevent[] an injured person from obtaining a double recovery for the damage he has sustained'...". Riley v. Ford Motor Co., 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015); citing Rutland v. S.C. Dep't of Transp., 400 S.C. 209, 215, 734 S.E.2d 142, 145 (2012). In this case, the "damage" sustained were medical bills. The "injured person" who incurred that damage was Stacy Somers—not her minor child. Thus, declining to reduce the minor's non-economic damages jury verdict by the amount of medical bills his parent incurred poses no threat of "double recovery."¹

II. The Respondent Misstates the Substance of the Minor Settlement Order

Twice within his brief, the Respondent vaguely refers to the minor settlement order so as to imply that the full amount of the \$25,000 of liability insurance benefits were directed to Clayton Somers: "the plain text of the Settlement expressly states a *total sum of twenty-five thousand dollars* would be paid by Respondent for *Appellant*" (Respondent's Brief at 5)(emphasis in original); "Respondent is entitled to a setoff for the full amount paid to Appellant as expressly detailed in the original settlement" (Respondent's Brief at 6). These references do not quote the

¹ Respondent's reference to a parent's responsibility to provide support to his or her minor child under Chapter 5, Title 63 is also irrelevant for the same reason. The medical bills, once incurred, are a liability of the parent—not the child. Whether the parent was bound by law to incur such bills is of no consequence. In fact, the parent's legal responsibility for providing medical care further underscores the fact that compensatory damages stemming from such care go to the parent.

minor settlement order, however, and in fact the substance of the order contradicts the Respondent's implication.

FOURTEEN THOUSAND FIVE HUNDRED SEVENTY-SIX AND 08/100 (\$14,576.08) to Stacy Somers for medical expenses past and future incurred for the treatment of her minor child . . . [and] "TEN THOUSAND FOUR HUNDRED TWENTY THREE AND 92/100 (\$10,423.92) for Stacy Somers as, Guardian ad Litem for Clayton Matthew Somers, for the minor child's sole use and benefit.

(Minor Settlement Order) As a result, the minor settlement order supports the Appellant's contention that he did not enjoy the full \$25,000 of underlying liability insurance, and therefore, this amount should not be set off from his jury verdict.

III. The Respondent Does Not Address the Trial Court's Error in Concluding Liability Insurance Benefits Available to Clayton Somers Were Not Exhausted

The Respondent's brief does not contest whether the trial court erred in concluding that the liability insurance available to Clayton Somers was not exhausted by the minor settlement. Thus he appears to have conceded the issue. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating a failure to provide arguments or supporting authority is deemed abandonment of an issue). With the liability insurance available to Clayton Somers having been exhausted, the only question remaining is whether the benefits paid to his mother for the medical bills she incurred should be set off against Clayton Somers's non-economic damages jury verdict. As stated above, the answer is "no."

CONCLUSION

Based on the arguments set forth above and those set forth within the Appellant's original brief, the order of the trial court should be reversed and remanded with instructions to enter judgment on behalf of Clayton Somers in the amount of \$50,942.50.

Respectfully submitted,

s/ Graham L. Newman

Graham L. Newman

W. Hugh McAngus, Jr.

James D. George, Jr.

CHAPPELL, SMITH & ARDEN, P.A.

2801 Devine Street, Suite 300

Columbia, South Carolina 29205

(803) 929-3600

(803) 929-3604

ATTORNEYS FOR APPELLANT

June 25, 2020

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(b), SCACR and the Supreme Court's order of May 29, 2020, the undersigned certifies that the Initial Reply Brief of Appellant has been served upon the attorney for the Respondent via the attorney's AIS email address. A copy of this electronic service is attached.

s/ Graham L. Newman
Graham L. Newman
W. Hugh McAngus, Jr.
James D. George, Jr.
Chappell Smith & Arden, P.A.
Post Office Box 12330
Columbia, South Carolina 29211
(803)929-3600

Attorneys for Appellant

June 25, 2020
Columbia, South Carolina

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Graham Newman

From: Graham Newman
Sent: Thursday, June 25, 2020 11:34 AM
To: rlbrown@wjlaw.net
Cc: Hugh McAngus; James D. George Jr.
Subject: Somers v. Harper Reply Brief
Attachments: Somers Reply Brief & TOC.pdf

Rob,

I hope this email finds you and your family well. Attached please find the Appellant's Reply Brief.

Graham L. Newman
2801 Devine Street, Suite 300
Post Office Box 12330
Columbia, South Carolina 29211
(803) 929-3600
(803) 929-3604 (facsimile)

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CHAPPELL SMITH & ARDEN, P.A.



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