

Maggie Mccraw et al  
PLAINTIFF(S)

Fundamental Clinical And Operational Services, Llc et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN** (*CHECK REASON*):  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

See additional order information below.

**RECEIVED**  
**Nov 30 2020**  
**SC Court of Appeals**

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/25/2020 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Plaintiff Maggie McCraw was admitted to Defendant's physical rehabilitation and wellness center for care in 2009. Plaintiff alleges that Ms. McCraw died, January 2017 due to her negligent treatment there, citing to the fact that she suffered from an infestation of Norwegian Scabies, which led to her death while a resident there. Plaintiff now sues for negligence and wrongful death.

Defendant THI of SC moves to Stay Action and Compel Arbitration citing to the arbitration agreement that was signed upon Ms. McCraw's admittance to the facility, Defendant's now move to enforce said agreement.

Defendant Fundamental Administrative Services move to Stay Court Proceedings and Defendant Fundamental Clinical and Operational Services seek an order staying all court proceedings until the validity of the arbitration agreement is resolved.

Plaintiff moves to Compel Discovery Responses from Defendant David Violette M.D. Plaintiff asserts that she served requests for production and interrogatories on David Violette on September 4, 2019.

Considering the arguments presented, the defendant's motions to compel arbitration and the request for limited discovery on the issue of agency are denied. Also, the requests to stay the proceeding made by Defendants Fundamental Administrative Services and Fundamental Clinical Operational Services are also denied. The Court is informed that Defendant Violette has now complied with the discovery requested by Plaintiff and therefore the motion is moot.

Plaintiff's counsel is asked to prepare a formal order consistent with the above language. Please prepare a complete order to include that merger is not an issue in this case due to a lack of signatures, the identity of the parties, and due to the language contained in the admission agreement. Also include that estoppel does not apply to the present case. As an observation, estoppel is an equitable theory. If estoppel is applied to the present case, so will the Plaintiff's arguments of no consideration, arbitration does not apply to wrongful death claims and tort of outrageous exception due to the decedent's death being caused by Norwegian scabies while in the facility.



Spartanburg Common Pleas

**Case Caption:** Maggie Mccraw , plaintiff, et al VS Fundamental Clinical And Operational Services, Llc , defendant, et al

**Case Number:** 2019CP4202449

**Type:** Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132