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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-CP-42-3178
Appellate Case No. 2017-002299

Treva C. Flowers, Tristan Flowers, and
Ashley F., an infant under the age of
fourteen (14) years, by and through her next
friends, Treva C. Flowers and Tristan
Flowers,

Appellants,

v.

Bang N. Giep, M.D., and Spartanburg &
Pelham OB-GYN, P.A. (formerly Spartanburg
OB-GYN, P.A.),

Respondents.

APPELLANTS' PETITION FOR REHEARING

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MOTION

The appellants move for rehearing of the decision of the South Carolina Court of Appeals, entered October 6, 2021 and affirming the order of the Spartanburg County Court of Common Pleas denying appellants' motion to strike Respondents' affirmative defense of emergency medical care.

This motion for rehearing is made pursuant to SCACR Rule 221 and is based on grounds that the Court of Appeals overlooked or misapprehended the following points:

- 1) Subsection (C) of S.C. Code Ann. § 15-32-230 must be read *in pari materia* with subsections (A) and (B) and not ignored as was done by the trial court and Court of Appeals.
- 2) The “last legislative expression” rule required subsection (B) to prevail over subsection (A).
- 3) When there are two legislative expressions on the same issue, a more specific statute must be considered an exception to, or a qualifier of, the general statute and given such effect.
- 4) Pursuant to §15-32-230(C) the legislature intended subsections § 15-32-230(A) & (B) to be read as a singular “limitation” and not as “separate and distinct” limitations as interpreted by the trial court and Court of Appeals.
- 5) The legislature did not intend § 15-32-230(B) to apply separately from § 15-32-230(A) rather than as a limitation to § 15-32-230(A).
- 6) S.C. Code Ann. § 15-32-230 does not provide a defense against simple negligence in two separate and distinct scenarios.

- 7) The trial court erred as a matter of law and abused his discretion by denying the appellants' motion to strike the doctors' affirmative defense of emergency medical care.

MEMORANDUM

The Court of Appeals found that the legislature intended S.C. Code Ann. § 15-32-230(B) “to apply separately from subsection (A) rather than as a limitation to (A).” Without any consideration of § 15-32-230(C), the Court of Appeals held that the language of subsection (B) “neither indicates that it is a limitation on the defense provided in subsection (A) nor does it state that subsection (A) only provides a defense for obstetrical care if the requirements within subsection (B) are satisfied.” *See Flowers v. Giep*, 2021 S.C. App. LEXIS 121, *7-8, 2021 WL 4570930 (S.C. Ct. App. October 6, 2021).

The Court of Appeals overlooked that the singular legislative purpose of § 15-32-230¹ is

¹ In its entirety S.C. Code Ann. § 15-32-230 reads as follows:

(A) In an action involving a medical malpractice claim arising out of care rendered in a genuine emergency situation involving an immediate threat of death or serious bodily injury to the patient receiving care in an emergency department or in an obstetrical or surgical suite, no physician may be held liable unless it is proven that the physician was grossly negligent.

(B) In an action involving a medical malpractice claim arising out of obstetrical care rendered by a physician on an emergency basis when there is no previous doctor/patient relationship between the physician or a member of his practice with a patient or the patient has not received prenatal care, such physician is not liable unless it is proven such physician is grossly negligent.

(C) The limitation on physician liability established by subsections (A) and (B) shall only apply if the patient is not medically stable and:

(1) in immediate threat of death; or

(2) in immediate threat of serious bodily injury.

Further, the limitation on physician liability established by subsections (A) and (B) shall only apply to care rendered prior to the patient’s discharge from the emergency department or obstetrical or surgical suite.

to provide a limitation on liability in certain emergencies “unless it is proven such physician is grossly negligent.” While subsection (A) provides that simple negligence generally will not impose liability in a genuine emergency situation involving an immediate threat of death or serious bodily injury to the patient receiving care in an emergency department or in an obstetrical or surgical suite, subsection (B) provides simple negligence will impose liability on a physician or practice that had a previous physician/patient relationship with the victim for obstetrical care. In other words, subsection (B) provides an exception to subsection (A).

In *Ranucci v. Crain*, 409 S.C. 493 (2014), the South Carolina Supreme Court reversed lower courts that found separate and distinct purposes in statutory subsections that had been created for a singular legislative purpose. As here, the lower courts in *Ranucci* accepted defendants’ arguments that the plain and ordinary meaning of different sections within the same legislative act, rendered those sections separate and distinct in their applications. The Supreme Court, however, said the lower courts were wrong.

"It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result."

Ranucci, 409 S.C. at 501(quoting *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536S.E.2d 372, 375 (2000)).

The Supreme Court in *Ranucci* found that the General Assembly’s internal cross-referencing of the statutes manifested an intent for the sections to be read *in pari materia*. See *Ranucci*, 409 S.C. at 501. Similarly, subsection (C) of § 15-32-230 twice cross references subsections (A) and (B) as establishing a singular limitation.

(C) The limitation on physician liability established by subsections (A) and (B) shall only apply if the patient is not medically stable and:

(1) in immediate threat of death; or

(2) in immediate threat of serious bodily injury.

Further, the limitation on physician liability established by subsections (A) and (B) shall only apply to care rendered prior to the patient's discharge from the emergency department or obstetrical or surgical suite.

S.C. Code Ann. § 15-32-230(C) (emphasis added).

The “limitation on physician liability” cross referenced by subsection (C) clearly should be interpreted as a singular limitation established by subsections (A) *and* (B) together, rather than separate and distinct limitations as found by the Court of Appeals.

Another pertinent rule of statutory construction overlooked by the Court of Appeals is the “last legislative expression” rule, which provides that where conflicting provisions exist, the last in point of time or order of arrangement, prevails. *See Eagle Container Co., LLC v. Cty. of Newberry*, 366 S.C. 611, 622 S.E.2d 733 (Ct. App. 2005) (citing *Ramsey v. County of McCormick*, 306 S.C. 393, 397, 412 S.E.2d 408, 410 (1991); *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 51, 26 S.E.2d 22, 24 (1943)).

Also overlooked is the rule of statutory construction that where one statute addresses an issue in general terms and another statute dealing with the identical issue addresses the issue in a more specific and definite manner, “the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” *Eagle Container Co.* 366 S.C. at 629 (citing *Wilder v. South Carolina Hwy. Dep't*, 228 S.C. 448, 90 S.E.2d 635 (1955)).

In this case subsection (A) pertains generally to medical emergencies occurring in obstetrical suites, surgical suites, or emergency departments regardless of whether the medical problem is obstetrical. Subsection (B) specifically pertains to emergencies arising in the course of obstetrical care. The conflict as to which will prevail must be resolved in favor of subsection (B),

which is more specific to the type of emergency and follows subsection (A) in the order of the statute.

CONCLUSION

Appellants' petition for rehearing should be granted, the issues raised by the petition should be reconsidered, the order of the trial court should be reversed, and the case should be remanded for new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 19, 2021, I had copies of Appellants' Petition for Rehearing placed into the United States mail postage paid for First Class delivery for service upon the following counsel of record:

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