



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 19, 2021

Mr. Jay Franklin Wright, Esquire
135 Edinburgh Court
Suite 202
Greenville SC 29607

Mr. Jordan Christopher Calloway, Esquire
1539 Health Care Dr.
Rock Hill SC 29732

Re: Anita Chabek v. AnMed Health
Appellate Case No. 2021-001129

Dear Counsel:

The Court received the copy of the transcript filed October 28, 2021. Rule 207 of the South Carolina Appellate Court Rules, does not require a copy of the transcript to be filed at this time. Accordingly, the transcript is being returned to you. The appellant's initial brief and designation of matter are due within thirty days of the date of this letter, or your appeal will be dismissed.

Very truly yours,

A handwritten signature in blue ink that reads "Jenny A. Kitchings".

CLERK

cc: Marian Williams Scalise, Esquire
Fred W. Suggs, III, Esquire
Carmen Vaughn Ganjehsani, Esquire

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In the Court of Common Pleas for the
State of South Carolina, County of Anderson

Case No.: 2021NI0400011

Anita Chabek,
Plaintiff(s),
vs.
AnMed Health,
Defendant(s).

Transcript of Record

RECEIVED
Oct 28 2021
SC Court of Appeals

July 21, 2021

Anderson, South Carolina

BEFORE:

The Honorable L. McIntosh

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APPEARANCES

REPRESENTING THE PLAINTIFF:

Jay Wright, Esquire
McGowan Hood & Felder, LLC
135 Edinburgh Court, Suite 202
Greenville, SC 29607
864-252-4406

REPRESENTING THE DEFENDANT(S):

Fred W. Suggs, III, Esquire
Roe Cassidy Coates & Price, PA
Post Office Box 10529
Greenville, SC 29603
(864) 349-2616

and

Marian Williams Scalise, Esquire
Richardson Plowden & Robinson, PA
PO Box 3646
Myrtle Beach, SC 29578

1 PROCEEDINGS

2 THE COURT: Motion to Dismiss for Dr. Hand
3 from the hospital.

4 MS. SCALISE: Yes, sir. So, the first one, I
5 believe, on Your Honor's roster is Adams, Betsy
6 Adams versus AnMed. It is a Dr. Davidson case.
7 2021CP04-716 is a Motion to Strike an offer of
8 judgment. And I have that motion in our memoranda,
9 Your Honor.

10 THE COURT: This is a Motion to Strike offer
11 of judgment?

12 MS. SCALISE: Yes, sir.

13 THE COURT: Let me ask you this, I went to
14 Rule 68 when I saw this motion on my desk. And I
15 don't see any time limitations in the rule. So,
16 why should I strike it?

17 MS. SCALISE: You are right, Your Honor.
18 There's no time limitation in that, but I think,
19 Your Honor, this particular offer of judgment was
20 filed 12 days after he filed his Summons and
21 Complaint.

22 THE COURT: Again, there is no time
23 limitation. I mean, you are asking me to insert an
24 item into the rule that is not there, and I don't
25 think that I can do that. I guess that I could in

1 my discretion, but I don't know why -- what is
2 wrong with the offer of judgment at this time?

3 MS. SCALISE: Well, Your Honor, first of all,
4 the offer of judgment is for more than the
5 statutory cap, it is 1.3 against Dr. Davidson. And
6 it is three hundred thousand against AnMed. But,
7 Your Honor, if I may, I want to tell you a little
8 bit about some of the background. I know that Your
9 Honor has heard a lot of the facts in other cases,
10 but so far, you know, there is zero evidence that
11 Dr. Davidson was actually impaired during any
12 surgery at all.

13 In the Riggins case we have taken depositions
14 -- we have taken depositions of Ms. Riggins and her
15 two adult children that talked to Dr. Davidson
16 before he operated. They agreed that there was
17 nothing about him that lead them to believe that he
18 was impaired. He didn't slur his words, he didn't
19 act improperly.

20 So, again, they have also taken depositions of
21 numerous operating room personnel from that surgery.
22 None of them thought that there was anything wrong
23 with him, as far as being impaired. Granted, you
24 are aware of the fact that he has some behavioral
25 issues, cussing and, you know, banging on the

1 computer and told some of the staff to unplug the
2 phone. But, again, through the course of discovery
3 what has come out is, from the very beginning, since
4 he's been there he's acted that way.

5 So, and we know for a fact that he was not
6 under the influence of alcohol then. He was
7 actually going through the recovery specialist
8 program and he was tested regularly for alcohol and
9 always tested negative.

10 So, again, there's just no evidence that
11 alcohol is what caused any of that. And I think
12 that it is a red herring that is, unfortunately is
13 becoming a sort of sexy part of the case. But
14 really what we are dealing with is complications of
15 surgery. And for Ms. Adams, for us to have not
16 taken any depositions, not engaged in any discovery,
17 plaintiff's attorney has not even provided us with
18 the medical bills. It's even hard to say, how would
19 you even value that case. And certainly not some
20 amount that is above the statutory cap.

21 So, we just feel like the timing of that is
22 inappropriate. I agree with Your Honor that the
23 statute as well as Rule 68 don't give a specific
24 time frame, but I think it's clear that the
25 legislative intent is that it should be something

1 before the close of discovery.

2 Because, again, they do have a cut-off of
3 twenty days before trial that you can file an offer
4 of judgment. So, I think if you are looking at it
5 as a whole, the inference is you should engage in
6 some type of discovery beforehand. I know that we
7 filed a memorandum that kind of set out our
8 arguments on that, but we would just ask that you
9 strike that offer of judgment. He's certainly free
10 to file that later once we finish discovery, but
11 that would be our request. Thank you, Your Honor.

12 THE COURT: I am going to deny your motion. I
13 don't think that I have the authority, there's not
14 a law that tells me that I can do that. Does a
15 Form 4 suit everybody on that?

16 MS. SCALISE: Yes, sir.

17 THE COURT: Okay. What is your next motion?

18 MS. SCALISE: The next is a Motion to Dismiss,
19 or Motion for Summary Judgment. That is on the
20 Chabek case. This is a Notice of Intent that is
21 2021NI400011. And the gist of this one, Your
22 Honor, is from a chronological perspective, Ms.
23 Chabek's surgery was actually the very first one of
24 all of these surgeries. So, I know that you are
25 familiar with the Riggins. This is before the

1 Riggins.

2 So, this surgery took place on August the 22nd
3 of 2017. She didn't file, actually, the NOI until,
4 yeah, March 12th of 2021. So, Your Honor, that is
5 well outside the three-year statute of limitation.
6 Even under the discovery rule, clearly the courts
7 have looked at when you knew or should have known,
8 that is when the statute runs.

9 In our memorandum we set forth all of the
10 different office visits that she had, and not only
11 with our staff but also with other doctors where she
12 had complaints. She was told what problems she had.
13 But more importantly, there is a date of March the
14 7th of 2018 where her husband even said, We no
15 longer want to come to anybody at AnMed Spine and
16 Neurosurgery, we want to go elsewhere. So, clearly
17 by that date she knew or should have known that
18 there was some issue going on that she was unhappy
19 with Dr. Davidson as well as AnMed.

20 And the fact that she then filed on March the
21 12th of 2021 is clearly outside of that three-year
22 statute. And we believe that the statute of
23 limitations does apply to this action.

24 MR. SUGGS: May I add just briefly, Your
25 Honor? Judge, I was looking at it as well. As

1 this Court knows, it is not a subjective standard.
2 So it's not when Ms. Chabek claims that she knew,
3 or realized something was going on. Because if
4 that were the case, then in every case involving a
5 potential statute of limitations issue everyone at
6 the plaintiffs table would say, Well, I didn't
7 know. It is an objective standard.

8 The case of Young versus South Carolina
9 Department of Corrections 333 S.C. 714 states as
10 follows, "Whether the particular plaintiff actually
11 knew he had a claim is not the test. Rather, Courts
12 must decide whether the circumstances of the case
13 would put a person of common knowledge and
14 experience on notice that some right of his had been
15 invaded or that some claim against another party
16 might exist.

17 The case of Owenby versus Kiesau, also 2014
18 case -- or excuse me 2004 South Carolina Court of
19 Appeals case factually is very, very similar. And
20 we believe, Judge, that when you look at the
21 objective medical records here, certainly by early
22 March when Dr. Brill, who was not an AnMed
23 Neurosurgery and Spine doctor, said that spontaneous
24 activity in her right lumbar paraspinal muscles
25 could be related to her surgery, should be related.

1 That she was put on notice. And the statute of
2 limitations ran. And because she failed to file her
3 action until March 12th, she is outside of the
4 three-year statute of limitations, and it is a
5 decision for the Court to make.

6 THE COURT: And these are before me on a
7 Motion to Dismiss, but you are asking that I
8 convert it to a Motion for Summary Judgment?

9 MR. SUGGS: Alternative, it is an alternative
10 motion, Judge. It is a Motion to Dismiss slash
11 alternatively Summary Judgment.

12 THE COURT: And candidly, for you, I haven't
13 received a brief. It's probably something that
14 didn't come by -- did you file a brief?

15 MS. SCALISE: It is a joint brief.

16 THE COURT: All right, Mr. Wright. I'll be
17 glad to hear from you.

18 MR. WRIGHT: Yes, sir, Your Honor. All right.
19 So, as far as the actual surgery itself, we are in
20 agreement as to the law and the applicability, it
21 is an objective standard. And it is -- we are not
22 alleging -- it was outside of three years from the
23 date of the surgery. So, obviously we are
24 contending that the date of discovery was later
25 than three years before we filed it.

1 THE COURT: What about this statement of Dr.
2 Brill where he says, this is possibly due to
3 surgery.

4 MR. WRIGHT: Okay. Well, let me --

5 THE COURT: What was that date again, March
6 the 1st?

7 MS. SCALISE: Yes.

8 MR. SUGGS: Yes, March the 1st, Your Honor.
9 And then there is also March the 6th visit with
10 Travis Jeffcoat where he says the CT myelogram is
11 needed to evaluate the integrity of her spine.

12 THE COURT: That was March 1st, 2018?

13 MR. SUGGS: Yes, sir.

14 THE COURT: Okay. Yes, sir.

15 *(Whereupon, Plaintiff's Exhibit No(s). 1 marked*
16 *for identification.)*

17 MR. WRIGHT: Okay. Let me mark as Exhibit 1
18 to our -- this is the AnMed record in this case,
19 Page 31.

20 Your Honor, we also talked brief -- I don't
21 think it has been approved yet, but I will give you
22 a copy when we finish. Yes, sir.

23 THE COURT: Please do. What am I looking at,
24 Mr. Wright?

25 MR. WRIGHT: The highlighted portion will tell

1 you. This is the preoperative note of the
2 discussion that Dr. Davidson had with Ms. Chabek
3 before her surgery. And he specifically informed
4 Ms. Chabek that there could be spinal
5 destabilization, nerve injury, worsening of
6 symptoms, et cetera. All of that would be -- what
7 they would say would be known complications of the
8 surgery that could occur absence any negligence.
9 Okay.

10 And so, this is what she was told before the
11 surgery. So, obviously when she did begin to have
12 worsening of her symptoms, she was continually told,
13 This is just a known risk of the procedure, it is
14 not due to any kind of inappropriate treatment as
15 you were told --

16 THE COURT: Going back to my question earlier.
17 What about the time that Dr. Brill said, Look, this
18 could be due to your surgery, and that was on March
19 the 1st, 2018.

20 MR. WRIGHT: Well, first of all, that was a
21 note. That was a medical note. There is no
22 evidence at all that Dr. Brill actually conveyed
23 that information to the patient. Okay. This was
24 his -- this was a -- he did a nerve con -- I think
25 it was a nerve conduction study, and this was just

1 his medical note. So, that is number one.

2 But even despite that, number two would be that
3 Ms. Chabek was continually told, over and over
4 again, that, yes, you are having a worsening of your
5 symptoms, but this is something that can happen
6 absent any negligence, that Dr. Davidson did
7 everything that he should have done, and you are
8 just an unlucky -- one of those unlucky that has one
9 of these known complications.

10 THE COURT: Well, would you agree with me that
11 if Dr. Brill did, in fact, told her that this was
12 due to your surgery, that that would trigger the
13 running of the statute of limitations on those
14 provisions?

15 MR. WRIGHT: No, sir, I don't, because that is
16 exactly what Dr. Davidson told her too, that --
17 unless he told her, it could be a result of the
18 surgeon inappropriately treating you during your
19 surgery, just telling you it was a result of the
20 surgery is exactly in line with what Dr. Davidson
21 told her to expect anyway, or that that could be a
22 potential possibility.

23 THE COURT: When do you contend that the
24 statute began to run?

25 MR. WRIGHT: All right. It goes to what Ms.

1 Scalise was saying as well, at some point, yes,
2 they kept getting told over and over again,
3 essentially, there is not anything that we can do
4 for you. You are one of those few that receive
5 absolutely appropriate treatment, but for whatever
6 reason you just have this complication. It is not
7 due to anybody's fault, you are just one of those
8 unlucky few.

9 And she kept going back to him. And she kept,
10 she had no negligence or no -- she didn't miss a
11 doctor's appointment. She kept going back, and
12 back, and back, and saying, Help me, you know, is
13 there anything that we can do.

14 Finally she said, All right, these people, you
15 know, as good as they are trying to do, are not
16 giving me any solutions. So, they said, Let's go
17 get a second opinion. And so they did that I think
18 in April, they decided to do that. It took them a
19 while to get an appointment with a neurosurgeon.
20 They went down to Greenwood.

21 *(Whereupon, Plaintiff's Exhibit No(s). 2 marked*
22 *for identification.)*

23 MR. WRIGHT: At Greenwood is where she was
24 first informed that she had -- here is a copy.
25 This will be Exhibit 2. Where she was first

1 informed that she had a right fractured L5 facet
2 joint, and that an element of instability at this
3 level could correlate with her right leg pain. So,
4 that is number one.

5 *(Whereupon, Plaintiff's Exhibit No(s). 3 marked*
6 *for identification.)*

7 MR. WRIGHT: And then this will be Exhibit 3.
8 This is a copy of the affidavit of our expert
9 witness, Your Honor. It is Dr. Davey, he is an
10 orthopedic surgeon. He was up in the upstate, now
11 he is down in Florida.

12 THE COURT: Florida?

13 MR. WRIGHT: Florida, yes, sir.

14 THE COURT: Hang on. Let me look at his
15 affidavit.

16 MR. WRIGHT: And specifically the first bullet
17 point. And specifically, Your Honor, it is the
18 failing to install instrumentation.

19 THE COURT: Hang on.

20 (Pause.)

21 THE COURT: Okay, sir?

22 MR. WRIGHT: Yes, sir. And so this was
23 actually the first time that she learned -- had
24 ever heard the opinion that Dr. Davidson
25 essentially removed a portion of her facet joint

1 from her back.

2 THE COURT: But that is not the issue though.

3 MR. WRIGHT: I know.

4 THE COURT: Hang on. Hang on. It's not
5 whether you can fully develop the theory of your
6 case, but whether or not you should know that you
7 need to start developing the theory of the case
8 from what point.

9 MR. WRIGHT: Yes, sir, but this was the first
10 time that the client ever heard any mention or any
11 allegation, suggestion, that there was insufficient
12 instrumentation. Actually he installed no
13 instrumentation. So, basically this was the first
14 time that the client had heard that there was a
15 potential that insufficient instrumentation had
16 been put in.

17 But, so as far as the objective standard, why
18 should she, as a patient, when she was told before
19 the operation began that, Even if I give you
20 appropriate treatment, you could have worsening of
21 symptoms, you could have destabilization of your
22 spine, you could have nerve injury. Why should that
23 patient, when those symptoms develop, why should she
24 not be able to trust what her doctor told her in the
25 beginning to say, Oh. And there are continued

1 assertions to her that this was not due to any kind
2 of negligence. She was specifically told that these
3 kind of things can happen, and told over and over
4 again that these were the result of no negligence
5 whatsoever. So, until she went down and got a
6 second opinion from the doctor in Greenwood was the
7 first time, and that was in August of 2018, well
8 before when we filed in March. You know, three
9 years, so we filed well before the three-year
10 statute would have run if the discovery kicked in in
11 August of 2018.

12 THE COURT: Let me ask you something, Ms.
13 Scalise.

14 MS. SCALISE: Yes, sir.

15 THE COURT: You are saying when they decided
16 to go to another doctor, that put them on notice.
17 But that is not unusual when people go out and say,
18 I need a second opinion. Not that I feel that he
19 did something wrong, but I'm not getting
20 improvement. That is not uncommon at all. But I
21 want to focus more on that March 1st thing with Dr.
22 Brill. You know, that seems to be important.

23 Did he ever attribute, to make a brassy point,
24 she was told of these potential side effects and
25 given their informed consent in this case, and she

1 continued to follow-up, nobody said anything to
2 her -- she was getting worse -- that is something
3 that could happen because of surgery.

4 Is there anything in Brill's note where he says
5 it is a deviation of standard of care? Which I
6 doubt there is.

7 MS. SCALISE: No, Your Honor, but neither is
8 the document that he showed you from the later
9 neurosurgery folks. They didn't say that there was
10 a breach of the standard of care. But we do have a
11 March 7th, 2018 note where the patient says -- or
12 it says, The wife was not happy with the office and
13 did not want to come back. So, clearly, she's
14 unhappy for whatever reason.

15 Like Your Honor pointed out, she doesn't have
16 to know the full reason, doesn't have to know the
17 full impact or the whole theory of liability, she
18 just has to know, there is something about this I
19 don't like, something that I am not happy with. And
20 I think that that does trigger the discovery rule.
21 At least as of March the 7th, 2018.

22 MR. SUGGS: Judge, may I briefly?

23 THE COURT: Yes, sir.

24 MR. SUGGS: Something that he just said, that
25 Mr. Wright said, that got me thinking about this

1 known complication. Well, isn't that a known --
2 Judge, the vast majority of the surgical cases I
3 have, 90 plus percent, are lawsuits about a known
4 complication. Even though the consent says, You
5 can injure your bowel, I guarantee you, if you go
6 take -- perform a hernia repair and you injure
7 someone's bowel, they are going to sue you anyway.

8 So, this idea that, Well, they told her these
9 are known complications, so they have reassured her
10 there are known complications. That doesn't toll
11 the statute of limitations or trigger the statute of
12 limitations, or else there wouldn't be a statute of
13 limitations in a case in which a patient experienced
14 a known complication. I just don't think that
15 argument is persuasive.

16 THE COURT: All right, guys. Let me read your
17 memoranda. And did I get yours?

18 MR. WRIGHT: No, sir, but I do have another
19 point to go over briefly as well.

20 THE COURT: Okay.

21 MR. WRIGHT: First off, as to that, I would
22 say, in addition to what Trey is saying, I think
23 the plaintiff will testify that defendants do not
24 clean hands in bringing this because they
25 affirmatively -- it wasn't like, you know, she had

1 post-operative complications and just should have
2 known. They repeatedly told her that they gave
3 appropriate treatment, appropriate treatment, and
4 she trusted them.

5 The only other point, Your Honor, and it is
6 point number two in my brief that I will hand to you
7 is, even if the Court were to rule to dismiss or
8 summary judgment for the actual medical malpractice
9 action related to the surgery, there are two other
10 causes of action, lack of informed consent, and
11 negligent supervision by AnMed Hospital.

12 THE COURT: Sorry, what is the last one?

13 MR. WRIGHT: Negligent supervision against
14 AnMed Hospital. Both of those relate only to the
15 fact that Dr. Davidson was performing operations
16 while in the midst of an alcohol substance abuse
17 relapse. And that is specific information that
18 would trigger those causes of action.

19 Ms. Chabek was not aware of anything related to
20 Dr. Davidson's alcohol abuse until, basically, last
21 year. So, she would be well within the three-year
22 statute of limitations for those two cause of
23 actions. Even if the Court were to rule that the
24 first cause of action for the medical malpractice
25 for the surgery itself should be granted, which we

1 don't think that it should.

2 THE COURT: I do not disagree with him on
3 that.

4 MS. SCALISE: On that, I think, again, it gets
5 back to the point of, Ms. Chabek's surgery was the
6 very first surgery, so I don't know how there can
7 be even any case or claim that the hospital
8 negligently supervised Dr. Davidson because that is
9 --

10 THE COURT: Well, maybe to that other issue,
11 but we are talking about statute of limitations.

12 MS. SCALISE: Yes, sir.

13 THE COURT: And I agree with Mr. Wright on
14 that. There's no way for her to have known all of
15 this information until later on -- much, much more
16 recently, last year --

17 MR. WRIGHT: October of 2020.

18 MS. SCALISE: Again, which gets back to the
19 Facebook post, and, you know, after she saw the
20 Facebook post, that is what then prompted her to
21 bring that.

22 THE COURT: Okay.

23 MR. SUGGS: Judge, can you have an informed
24 consent claim if you don't have the -- wouldn't the
25 underlying medical negligence claim --

1 THE COURT: Informed consent, I thought that
2 was part of the med mal case.

3 MR. SUGGS: Yes, I did too. So, wouldn't the
4 statute of limitations run from the same time?

5 THE COURT: Well, I think that if I were to
6 grant summary judgment, it would be the negligent

7 --

8 MR. WRIGHT: Your Honor, informed consent
9 doesn't allow any medical malpractice in the actual
10 surgery. You can have a claim for lack of informed
11 consent even if the surgery goes fine and
12 everything is good. And that is black letter law.
13 I can give you a brief on that if you would like.

14 THE COURT: Yes, send me one.

15 MR. WRIGHT: Okay.

16 THE COURT: And give me your brief now too.

17 MR. WRIGHT: Yes, sir.

18 MR. SUGGS: Judge, I realize that we are
19 taking up more time than we should.

20 THE COURT: You don't ever realize that.

21 MR. SUGGS: Someone has got to listen, Judge.
22 My wife doesn't want to hear me. My kids don't
23 want to hear me. My staff doesn't want to hear me.
24 Someone has got to listen to me, Judge.

25 Judge, on the -- going back to the Motion to

1 Compel. And understanding that I'm relying upon the
2 brief, I'm not going to run back through everything.
3 I do just want to make a couple of quick points,
4 Judge, as it relates to limitations on production.

5 So, in Thomas, we have got -- the Court looks
6 at the testimony and says, Golly, Davidson, it looks
7 like you were not forthright in your testimony, here
8 plaintiff, here are the records which are
9 contradicted. Excuse me, they contradict your
10 testimony. And then, in Riggins, we have got a
11 comparison, I presume, of the testimony and in the
12 records, and you granted production of all of them.

13 And my -- and in this case, shouldn't it -- in
14 all of these cases, shouldn't the production be
15 limited to, for one, only those matters --

16 THE COURT: Let me go back. I'm interrupting
17 you, but let me say this. Before I didn't have the
18 opportunity to have read Dr. Davidson's deposition.

19 MR. SUGGS: Right.

20 THE COURT: And before I was looking solely at
21 the treatment records, what a negligent facility
22 is.

23 MR. SUGGS: Right.

24 THE COURT: And then the argument was made, I
25 think by you, that he's admitted all of this stuff.

1 When I read his deposition, I disagreed with that,
2 I thought that he was vague on it. While he
3 admitted a little bit here and there, it was not
4 consistent and was not consistent with his
5 treatment records and statements in the treatment
6 records at all.

7 So, I thought that it all should come out
8 because a review will clarify one or the other. His
9 testimony, and you are probably about tired of
10 seeing it. So, what is the difference in these
11 cases now?

12 MR. SUGGS: Well, one, it should be on a
13 case -- I would think that the comparison, for
14 instance, in Marchbanks, is his testimony in
15 Marchbanks as to the records. Not comparison to
16 the Riggins' testimony. I respectfully disagree
17 that his testimony --

18 THE COURT: I know you do. I know you do.

19 MR. SUGGS: That is why I briefed it for ten
20 pages. But I don't think they are inconsistent.
21 But I respect, obviously, your opinion otherwise.
22 But I lost my train a little bit.

23 Oh, the second part of it though, Judge, is
24 assuming arguendo that they are relevant. For
25 instance, in Riggins, the date of surgery I think

1 was August 22nd. Wouldn't the records related to
2 events and condition only be relevant up until the
3 day -- so, the therapy records that reflect
4 treatment and events leading up to the date of
5 surgery could arguably be relevant.

6 But how can his treatment and events and frame
7 of mind, alcohol abuse, et cetera, after the date of
8 the care in question --

9 THE COURT: The records contain history,
10 statements from him about the onset of his problems
11 that are inconsistent with his deposition
12 testimony. I will agree with you that his
13 condition at the time that he was being treated is
14 not relevant to the petition at the time of these
15 surgeries that the malpractice came about. That
16 would be correct.

17 However, when he's making statements to doctors
18 for purposes of treatment that are inconsistent with
19 his sworn deposition testimony, or vague at best, or
20 ambiguous at best, I think clarifying those issues
21 back in time is relevant to this.

22 MR. SUGGS: I understand. I'm not stating my
23 point clear.

24 THE COURT: Okay.

25 MR. SUGGS: Okay. What I am saying is, Dr.

1 Davidson giving testimony -- or, excuse me, giving
2 -- talking to his therapist in January or March,
3 whenever it was. He's talking about events from
4 the past, right. I understand your ruling that, if
5 he's talking about events in August, at the time of
6 the surgery, yes, that makes sense. If he's
7 talking about the months and years that proceed
8 that date of surgery, August 22nd, I understand the
9 Court's ruling. But if he's talking about events
10 in October, two months after surgery, in December,
11 four months after surgery, in January after he's
12 done doing surgery.

13 THE COURT: The fact that I said that they are
14 discoverable doesn't mean that they are admissible.
15 Okay? Those are two totally different standards
16 that are to be met at some point in this case, or
17 these cases. But right now, my thought was,
18 clarify all of the issues, I will review the
19 records. I have done that. I'm not going to
20 change my mind about that, first of all.

21 Now, I can see that there might be a
22 distinction where, in one of these other cases he's
23 more forthcoming and less ambiguous and more clear
24 about the onset and the continuation of his drinking
25 problems, from preceding these procedures. And he's

1 already admitted, and you don't necessarily get it
2 again, because he's already clarified it in his
3 statement.

4 MR. SUGGS: Right.

5 THE COURT: But, at the same time, he has
6 already got it. I assume you have those records
7 now?

8 MR. WRIGHT: Yes, sir. I believe your order
9 is for Thursday at 5:00 p.m.

10 MR. SUGGS: And, Judge, I'm just being
11 transparent. I know, I just heard what you said.
12 I have already drafted the motion to reconsider.
13 It is going to be hitting you tomorrow. I know
14 what you are going to do with it, and then I am
15 going to have to do whatever I have got to do. But
16 I just --

17 THE COURT: Let me tell you something, you
18 have to protect yourself. And we are not here on
19 the same team, and sometimes we see things with
20 different lenses.

21 MR. SUGGS: Judge, why aren't you on my team?

22 THE COURT: I have been on your team plenty of
23 times.

24 MS. SCALISE: Your Honor, I do -- if I may be
25 heard on that gag order issue? I think, from my

1 perspective, the concern would be if that's out and
2 about, we have already had different, even
3 witnesses, who have said that they have seen that
4 on the website. My concern would be a juror, if
5 any of these cases ultimately goes to a jury what
6 happens is we may have to go to another county that
7 maybe wouldn't be --

8 THE COURT: Let me tell you something, you
9 know the rules on the change of venue, you don't do
10 that until jury selection. So, you know, that is a
11 risk, but I doubt very seriously that it is going
12 to run to that level. But, all said and done, if
13 y'all want me to consider a gag order, you have to
14 file one. Thank you, and take care.

15 (Hearing concluded.)
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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF OCONEE:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 18th day of October, 2021.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 10th Circuit
(850) 893-6662
mmanley@sccourts.org