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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2016-CP-10-05379
Appellate Case No. 2020-001643

The Estate of Delila Parrott,

Respondent,

v.

Sandpiper Independent and Assisted Living-Delaware, LLC,

Appellant.

**APPELLANT'S CONSENT MOTION TO
(1) AMEND APPELLANT'S INITIAL BRIEFS,
(2) AMEND THE RECORD ON APPEAL, AND
(3) EXTEND THE FINAL BRIEFING DEADLINE FOR ALL PARTIES**

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Attorneys for Appellant

NOW COMES Appellant, Sandpiper Independent and Assisted Living-Delaware, LLC, by and through its undersigned counsel, with the consent of opposing counsel, and, on the grounds set forth below, hereby moves this Honorable Court for the following relief:

- (1) To grant Appellant leave to amend its initial briefs,
- (2) To grant Appellant leave to amend the record on appeal, and
- (3) To extend the deadline for *all parties* to file/serve their final briefs until the Court has acted on the instant motion.

This appeal follows a non-jury trial. During trial, the testimony of one of Plaintiff's¹ expert witnesses, Dr. Lawrence Bergmann, was presented via deposition. Dr. Bergmann was deposed twice prior to trial: once on June 25, 2020 (the "Discovery Deposition"), and again on August 25, 2020 (the "Trial Deposition").

It has come to Appellant's counsel's attention that, through inadvertence, the Discovery Deposition (as opposed to the Trial Deposition) was cited in Appellant's initial appellate briefs and likewise that the Discovery Deposition (as opposed to the Trial Deposition) was included in the record on appeal that was filed/served on January 12, 2022.

To correct the foregoing, Appellant's counsel requests that the Court grant Appellant leave to amend the Initial Brief of Appellant and the Initial Reply Brief

of Appellant—in accordance with the attached Exhibits 1 and 2, which are redlined versions of the affected pages of the Initial Brief of Appellant and the Initial Reply Brief of Appellant, respectively²—and to file/serve final briefs in accordance with such amendments. Appellant’s counsel also requests that the Court grant Appellant leave to amend the record on appeal so as to omit the Discovery Deposition (and the exhibits thereto) and to substitute in its place the Trial Deposition. Lastly, Appellant’s counsel requests that the Court grant *all parties* to this appeal an extension of the deadline to file/serve their final briefs until the Court has ruled upon the instant request by Appellant to amend its initial briefs and the record on appeal.³

¹ “Plaintiff” is Plaintiff/Respondent, The Estate of Delila Parrott.

² The redlining shows (via strike through) the language that the proposed amendments seek to omit, along with, of course, the language they seek to add. In terms of substance, i.e., in terms of what Appellant is trying to say, Appellant’s counsel does not believe there is a material difference between the language of the original briefs and the language of the amended briefs.

³ With the record on appeal having been filed/served on January 12, 2022, the current deadline for the parties’ final briefs is today, February 1, 2022, pursuant to Rule 211(a), SCACR (setting the deadline for final briefs at 20 days after the service of the record on appeal). Presently, however, because of the above-explained inadvertence, the parties are not able to prepare proper final briefs, because, of course, the present record on appeal does not include the proper transcript for Dr. Bergmann (so final briefs cannot be prepared with citations thereto) and to remedy the situation requires obtaining the leave of this Court for which Appellant’s counsel now most respectfully asks. Accordingly, Appellant’s counsel submits that it is appropriate for the final briefing deadline to be extended for *all parties* until the Court acts on the motion, at which time (provided the Court sees fit to grant the leave to amend herein sought) Appellant will file/serve the amended record on appeal and the parties can file/serve their final briefs (with

With sincere apologies to the Court and counsel for the inadvertence that this motion seeks to correct, Appellant's counsel submits that there is good cause to grant the relief requested herein, as it is consistent with the interests of justice and will not cause any undue prejudice, hardship, or delay.

Prior to making this motion, the undersigned consulted with Plaintiff's counsel Paul L. Reeves, Esquire, who kindly offered his consent to the Court's grant of the relief requested herein.

Wherefore, Appellant moves this Court (1) to grant Appellant leave to amend its initial briefs (and to file/serve its final briefs in accordance with such amendments), (2) to grant Appellant leave to amend the record on appeal, and (3) to extend the deadline for *all parties* to file/serve their final briefs until the Court has acted on the instant motion.

<SIGNED ON THE FOLLOWING PAGE>

Appellant's final briefs being in accordance with the amendments requested

Respectfully submitted,

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herein) with citations to the proper transcript for Dr. Bergmann.

reasonably supports the trial court’s ruling that Defendant caused Ms. Parrott’s death claim.

With respect to wrongful death in particular, Plaintiff’s theory requires her to prove (by presenting medical expert testimony from which a reasonable, non-speculative conclusion can be reached, *see Hughes*, 269 S.C. at 398, 237 S.E.2d at 757; *Ellis*, 323 S.C. at 125, 473 S.E.2d at 795) that Ms. Parrott’s death was, to a reasonable degree of medical certainty, most probably caused not just by “delay” in discovering her, but specifically by the delay from approximately hour 25 (or more) on. In other words, Plaintiff’s experts needed to testify that, to a reasonable degree of medical certainty, had Ms. Parrott only been lying there from when she fell on the “evening” of Tuesday, June 3, 2014, until about 8:00 p.m. on Wednesday, June 4, 2014, she most probably would not have died.

Plaintiff’s experts’ testimony falls short of the “most probable”/reasonable degree of medical certainty standard that is required to substantiate a non-speculative causal relationship between the alleged negligence and Ms. Parrott’s death. They could not quantify the significance of the length of Ms. Parrott’s “long lie” and admitted they could not say at what point the hours would have (supposedly) caused her to lose her will to live and ultimately die 8 months later.

The testimony of Plaintiff’s expert Dr. Lawrence Bergmann, offered as an expert in the field of psychology trauma and its impact, was presented via *de benne esse* deposition. (Bergmann Trial Dep. Tr. pp. 9:24–10:2.) Dr. Bergmann testified



recognized that Ms. Parrott had a “~~fairly~~ serious” pre-existing psychological condition,²⁷ ~~which that included in 2009 had required her hospitalization for delusional parasitosis, i.e., for her delusional belief that insects were infesting her body by crawling into her bodily orifices and laying eggs, this belief having progressed to the point that Ms. Parrott was using duct tape to cover her body to keep the insects out and, indeed, to the point that Ms. Parrott’s medical records from the time reflect suicidal ideation, with Ms. Parrott having formulated a plan to take her own life by overdosing on pain medication. (Bergmann Trial Dep. Tr. p. 33:21–35:2.) While he believed that Ms. Parrott’s symptoms seemed to have been “managed fairly well” going forward,~~²⁸ Dr. Bergmann did acknowledge that Ms. Parrott had continued to experience delusions in the weeks and months leading up to the fall in June of 2014. (Bergmann Trial Dep. Tr. p. 35:16–19.) ~~being overly tearful, agitated, and anxious and complaints about insect bites that did not actually exist, avoidance of family members because of a belief that she was a host for invisible insects and contagious, and even suicidal ideation, with a plan at one point to overdose due to feeling overwhelmed with invisible insects. (Bergmann Tr. pp. 42–43, 45.)~~

~~Dr. Bergman also testified to Ms. Parrott’s history of depression, generalized anxiety, and delusions, the latter of which he described as “a very serious mental~~

²⁷ ~~(Bergman Tr. pp. 38–39.)~~

~~disorder.” (Bergmann Tr. p. 46.) In addition to the stresses of her anxiety, delusions, and paranoia, Ms. Parrott was a widow, and Dr. Bergman testified that her husband’s death had impacted her mental health. (Bergmann Tr. p. 50.) Moreover, Dr. Bergmann also testified acknowledged that Ms. Parrott’s vision was adversely impacted by ~~was suffering~~ macular degeneration²⁹ and that she had had mini strokes, which kept her from being able to do hobbies she had previously enjoyed, and that this contributed to increased mental health problems and impacted her emotionally. (Bergmann Trial Dep. Tr. pp. 36:3–15-52–53.)~~

With regard to the “long lie,” how long it was, and what its effect was on Ms. Parrott at what point in time, Dr. Bergmann provided no testimony that could reasonably support finding Defendant liable for Ms. Parrott’s wrongful death:

~~I . . . know that there are some — that there’s a question about whether Ms. Parrott was on the ground for two days or two hours and so while I think the length of time that she was on the floor is significant, in my opinion whether it was two days or less than two days the event could still be very significant and potentially traumatic for the person who experienced thatQ. Now, with regard to the delay, the alleged delay in finding M[s]. Parrott, you don’t know how long she lay on the ground after this fall, do you?:-~~

~~***~~

²⁸ (Bergmann Trial Dep. Tr. pp. 31:21–34:4.)

²⁹ (Bergmann Trial Dep. Tr. p. 33:15–20.)

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~~I also know an awful lot about trauma, and I know that—that although the length of time is a factor, it's not necessarily the only factor.~~
A. No, I don't.

~~I certainly know that I don't know how long she was there~~

(Bergmann Trial Dep. Tr. pp. 43:6–10; see also id. at p. 44:9–11 (“I know there are several different scenarios [as to when the fall occurred] and I'm not at a place to judge which scenario might be accurate.”73–74.)) Indeed, Dr. Bergmann does a nice job of helping to make ~~ing~~ Defendant's point:

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Q. I'll read this [excerpt from your prior deposition] and you can just tell me if I have read it correctly. Question: Do you intend to provide the opinion at trial that her decline ~~in [sic]and~~ death would not have occurred but for some alleged delay in finding her? Answer: I don't think there's anybody that can say that. Did I read that correctly?

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A. I don't think there's anybody that could say thatYes.

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***(Bergmann Trial Dep. Tr. p. 40:6–13 (emphasis added); see also id. at p. 41:16–19 (“Q. All right. So just to be clear, your opinion is the same today as it was at the time I took your deposition? A. I think so.”))

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Q. ~~Okay. And so—I'm trying not to hammer this too much, but I do want to make sure that I'm clear on it. You said at 12 hours or 24 hours. So you think if she had been there for 12 hours, you can't say what~~

~~difference it might have been between 12 hours and 24 hours as far as the impact and her — on her decline and death~~[Y]ou're not able to state with any specificity the degree of difference it would have made in terms of her alleged psychological decline between one scenario and the other [(i.e., between when Plaintiff claims the fall occurred and when Defendant claims the fall occurred)].?

A. ~~I think 12 hours is a long time to feel like you're not going to be rescued and nobody's going to come to get you. That's a long time. Two days, that's an incredible amount of time. I imagine if I was in that situation four 4 hours and I couldn't see, I couldn't get up, whatever, that seems like a long time~~Oh, I think I might be able to do that. I think if she had expected to be rescued because people may or may not have been checking on her, the more time went by the more helpless she would have been and the more desperate she might have been as well. *Now, where exactly what that time frame is, I don't think I can really describe that. I don't think anybody else can either.*

Q. ~~So I don't even know what times we're talking about. Two days would be horrendous, 12 hours would be horrible. I don't know. I just don't know. And I'm not going to be able to parse it any more than that~~You don't know what difference precisely it would have made in her psychological decline between a period of time lying on the ground for 24 hours after the fall versus 48 hours;?

A. ~~No, I'm not so concerned about that number.~~

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(Bergmann Trial Dep. Tr. pp. 81-8444:21-45:12 (emphasis added).)

In that deposition, he confirmed that, as to Ms. Parrott's death, the substance of the opinion he was expressing at trial was the same as he had expressed in his

~~earlier discovery deposition, which was: “[Q]: Do you intend to provide the opinion at trial that [Ms. Parrott’s] decline and demise would not have occurred but for some alleged delay in finding her? [A]: I don’t think there’s anybody that can say that.” (Bergman Trial Dep. p. 40:6–41:21 (emphasis added).)~~

Dr. Mills, too, failed to offer testimony to substantiate a claim for wrongful death. After admitting that it is “hard to know exactly” how long Ms. Parrott had been lying on floor after the fall,³⁰ he conceded that at the 24-hour point (a time before the time that Defendant’s alleged liability is even alleged to be triggered) it would be “a very traumatic event” that he would expect to have a “great effect” on her:

Q. . . . What affect would you -- is expected to have on her psychological, physically, mentally however you want to answer it, after she laid there for 24 hours and no one had come to check on her?

A. Well, I think that could have a great effect on her. I think that even a person that did not have any psychiatric history or problems in the past, that would be a very traumatic event that would be seared into their memory, that they could flash back to. It would make someone very anxious, very depressed depression [sic], that combined with the pain for a long period of time would be a very traumatic event.

In her case, I think that could react as a trigger to make her mental illness worse, make her more anxious, more suspicious.

³⁰ (Trial Day 2 Tr. p. 100.)

My impression in my medical judgment would be that it had a very significant impact on her. And given the severity impact, combined with the physical findings and combination -- and plus just what the patient said -- what she said is that she had been on the ground since Tuesday. I tend to believe all those things. And that leads me to support the assumption that she was on the ground for a prolonged period of time. And that led to a worsening of all her underlying psychiatric condition. Can I quantify it would have been 24 versus 48 versus 72? No. But I think it's a degradation on the longer she was on the ground for, the worst the issues would have been.

(Trial Day 2 Tr. pp. 131:12–132:6 (emphasis added).)

Dr. Bergmann

Q. I'll read this [excerpt from your prior deposition] and you can just tell me if I have read it correctly. Question: Do you intend to provide the opinion at trial that her decline and death would not have occurred but for some alleged delay in finding her? Answer: I don't think there's anybody that can say that. Did I read that correctly?

A. Yes.

(Bergmann Trial Dep. Tr. p. 40:6–13 (emphasis added); see also id. at p. 41: 16–19

("Q. All right. So just to be clear, your opinion is the same today as it was at the time I took your deposition? A. I think so."))

Q. [Y]ou're not able to state with any specificity the degree of difference it would have made in terms of her alleged psychological decline between one scenario and the other [(i.e., between when Plaintiff claims the fall occurred and when Defendant claims the fall occurred)]?

A. Oh, I think I might be able to do that. I think if she had expected to be rescued because people may or may not have been checking on her, the more time went by the more helpless she would have been and the more desperate she might have been as well. Now, where exactly what that time frame is, I don't think I can really describe that. I don't think anybody else can either.

Q. You don't know what difference precisely it would have made in her psychological decline between a period of time lying on the ground for 24 hours after the fall versus 48 hours?

A. No, I'm not so concerned about that number.

(Bergmann Trial Dep. Tr. pp. 44:21–45:12 (emphasis added).)

~~Q.— Do you intend to provide the opinion at trial that her decline in [sic] death would not have occurred but for some alleged delay in finding her?~~

~~A.— I don't think there's anybody that could say that.~~

~~(Bergmann Tr. p. 81:7–12 (emphasis added).)~~

~~Q.— So you think if she had been there for 12 hours, you can't say what difference it might have been between 12 hours and 24 hours as far as the impact and her—on her decline and death.~~

~~A.— I think 12 hours is a long time to feel like you're not going to be rescued and nobody's going to come to get you. That's a long time. Two days, that's an incredible amount of time. I imagine if I was in that situation four 4 hours and I couldn't see, I couldn't get up, whatever, that seems like a long time.~~

~~So I don't even know what times we're talking about. Two days would be horrendous, 12 hours would be horrible. I don't know. I just don't know. And I'm not going to be able to parse it any more than that.~~

~~(Bergman Tr. pp. 83:16–84:7 (emphasis added).)~~

Indeed, this point—that neither Dr. Bergmann nor Dr. Mills gave the necessary testimony for Plaintiff to prove the required but-for causal connection between Defendant's alleged negligence and Ms. Parrott's death—is underscored by the testimony cited in Plaintiff's own brief:

Re: Dr. Mills's Testimony

Dr. Mills explained that the physical and mental trauma of the long lie exacerbated [Ms. Parrott's] prior mental health issues, and he opined that the mental health decline resulted in a failure to thrive that was a contributing cause of her death:

Q. Do you have an opinion whether *the long lie of three days on the ground* contributed to her failure to thrive?

A. Yes, sir, I do. I think it harmed her both physically and emotionally, to a great extent.

Q. Do you have an opinion, to a reasonable degree of medical certainty that it contributed to -- she only lived eight months after this rather than eight years. Do you have an opinion that this long lie shortened her life?

A. Yes, sir, I do.

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The Estate of Delila Parrott,

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PROOF OF SERVICE

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Attorneys for Appellant

I, Russell G. Hines, of Clement Rivers, LLP, attorneys for Appellant, hereby certify that the **APPELLANT'S CONSENT MOTION TO (1) AMEND APPELLANT'S INITIAL BRIEFS, (2) AMEND THE RECORD ON APPEAL, AND (3) EXTEND THE FINAL BRIEFING DEADLINE FOR ALL PARTIES** were served on all other parties to this appeal on February 1, 2022, via email (see attached) to the following counsel of record:

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February 1, 2022

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Cc: 'Stephen Brown (sbrown@ycrlaw.com)'; Hines, Russell; Justman, Aimee
Subject: Appellate Case No. 2020-001643 ; Parrott v. Sandpiper
Attachments: Ex. 1 -- Parrott v. Sandpiper -- Amended Pages of Initial Brief of Appellant.pdf; Ex. 2 -- Parrott v. Sandpiper -- Amended Pages of Initial Reply Brief of Appellant.pdf; App. Case No. 2020-001643 - Parrott v. Sandpiper -- Consent Mot. to Amend App's Initial Briefs & ROA & to Ext Final Briefs.pdf

Enclosed please find Appellant's Consent Motion to (1)Amend Appellant's Initial Briefs, (2) Amend the Record on Appeal, and (3) Extend the Final Briefing Deadline for All Parties and the exhibits referenced therein which will be filed today with the Court of Appeals.

Thank you,

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