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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2021-000838

Case No. 2018-CP-26-5438

Tara Gurry,

Appellant,

v.

Myrtle Beach Dermatology, LLC,

Respondents.

Shannon Hussey, Richard Hussey M.D.

APPELLANT'S REPLY BRIEF

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COUNTER-STATEMENT OF THE CASE AND FACTS

Appellant was diagnosed with malignant melanoma on her right lateral thigh, it was surgical removed by a wide local excision on January 27, 2016 by Dr. Massesa. The surgery and recovery went well, and the thigh shape was normal with no depression as evident in pictures, PET/CT scan, medical records and witness testimony. Appellant was doing well, healthy and in great spirits since the PET/CT scan showed the melanoma did not metastasis.

Due to the seriousness of the malignant skin cancer diagnosis Appellant knew she wanted to established a good relationship with a dermatologist. She went to Myrtle Beach Dermatology, and had her first appointment with Nurse Practitioner Shannon Hussey on February 22, 2016, on this day's medical record there was no indication of any abnormal healing of the excision site. Appellant returned on May 3, 2016, for a routine skin check. After the skin check Respondent looked at the well healing scar, and stated, "I have something that'll make that look better, I do it all the time" She left the room and returned a few minutes later with a syringe, and injected "kenalog" into a normal healing scar. At this appointment, no informed consent was given, no diagnosis was made, and no disclosure of what Ms. Hussey was going to do with the syringe filled with kenalog. The appellant knew nothing of what was happening and the horrible side effects that would ensue.

One this fateful day Respondents' brief states only what's on the May 3, 2016 medical record rather than any of the plethora of other evidence that contradicts this, and the adamant testimony of Dr. Wikas that does as well. They state, Ms. Hussey documented a hypertrophic scar, and that she injected the scar with one cc of 3.3 mg of Kenalog. Also documented was that Appellant could still feel stitches in the scar, and it caused a pulling sensation. Then they erroneously state kenalog is used to alleviate the pulling sensation that is felt because of stitches, kenalog is not

used to loosen up tightness due to stitches, not only is it common sense yet Dr. Wikas debunked this, elaborating on it in his testimony.

Due to the injection, Appellant endured painful major atrophy, that destroyed subcutaneous tissue, nerves, veins, and it went so deep it damaged the iliotibial band, leaving a significant indentation in her leg. An orthopedic doctor diagnosed her with ITB syndrome, and Appellant became ill with various systemic side effects that are documented side effects 1of Kenalog in the Packet Insert, and included in her medical records.

She had to see many doctors, medical professionals, and physical therapists to try and get well, they performed examinations, tests and scans and Appellant was diagnosed with diseases, and disorders. Dr. Wikas had access and knowledge to all of the above information by medical records, pictures and testimony,

Per Appellant's consistent testimony, it states she was not informed by Ms. Hussey of any new "diagnosis" (hypertrophic scar), nor about the drug kenalog in any capacity. There was no explanation of the invasive treatment of the kenalog injection, nor were first line non-invasive treatments discussed, nor the common-sense option of letting it heal naturally offered. Appellant trusted her as a medical professional, and had no reason to believe, she'd be harmed nor suffer an adverse side effect, as no informed consent was given, the only information she was told from Ms. Hussey was, "I have something that'll make it look better, I do it all the time."

Subsequently a few weeks after the injection, Appellant saw dermatologist Dr. Sheretz, and was diagnosed with atrophy from the kenalog injection. Dr. Sheretz was in shock at the severity of the atrophy, and she voluntarily signed a statement stating what Ms. Hussey did was Below the Standard of Care. Dr. Wikas reviewed Dr. Sheretz medical records.

Dr. Wikas reviewed Coastal Cancer Center medical records on March 3, 2016 that show Appellant was in great health, on no medication, and the incision site was healing normally. Oncologist Dr. Markow wrote: "Overall, the patient's condition is unchanged...The patient notes no other significant modifying or associated signs or symptoms especially related to location, severity, duration, timing, context or quality...This patient reports not taking external medications." Dr. Markow thoroughly examined Ms. Gurry's incision both visually and manually, as melanoma is known to return to the primary tumor site. He documents in the medical records: "Right healing incision on the thigh. No significant erythema. Color and texture normal with no subcutaneous masses palpable. No rashes. No petechiae, ecchymosis or purpura."

Dr. Wikas reviewed Medical Records that included PET/CT scans where he noted the skin and subcutaneous tissue changes from the "before the injection" scan to the "after the injection". PET/CT scan February 25, 2016 show she was healing well with no loss of subcutaneous tissue from her WLE surgery, thigh shape was normal. PET/CT scan September 21, 2016 show drastic change with major subcutaneous loss and a depression in thigh. Let it be known, a layperson looking at these scans would easily be able to point out the legs and note where the damage is on the "after the injection scan". Although Dr. Wikas is not a radiologist, he has looked at scans in his dermatology practice to examine skin and subcutaneous tissue.

Dr. Wikas used several avenues and resources to formulate his medical opinion for this case. He used his medical education in dermatology and pharmacy, and his professional experience as a veteran dermatologist for 38 years, and former pharmacist. As a dermatologist he has extensive clinical practice as well being an educator for future dermatologist. For this case Dr. Wikas reviewed medical records, test, scans, pictures, Kenalog Packet Insert and discovery in the case.

He also did a thorough physical examination of Ms. Gurry's legs with emphasis on the depression and atrophy that the kenelog injection caused.

REPLY ARGUMENTS

Appellant hereby responds to the arguments set forth in Respondents' initial brief as follows and would argue that for those reasons, as well as those set forth more fully in Appellant's initial brief, the Court should grant Appellant's appeal and reverse the trial court's Order granting summary judgment. The Appellant offers the following points of clarification to the arguments raised in Respondents Response

Brief, as follows:

I. The Appellant did appeal the entire ground for trial court's rulings on the motion in limine and the summary judgment order, therefore the "two-issue" rule does not apply in this appeal.

A. Respondents argue the Appellant did not appeal each of the trial court's rulings on the motion in limine or the subsequent summary judgment order, and as a result, appellate review is barred by the "two-issue" rule.

Respondents argue that the Appellant's appeal did not address each of the the trial court's rulings on the motion in limine or the subsequent summary judgment order, therefore the appellate review is barred by the "two-issue" rule. That argument is without merit and seeks to overlook the fact that the motion in limine and summary judgment was based solely on the ground of the exclusion of the expert witness testimony which resulted in a summary judgment. Respondents' deciphering the trial court orders as anything other than a part of the trial court's explanation of the exclusion of the expert witness testimony is strained at best.

The Respondents erroneously attempt to frame this appeal as being erred and barred because of the "two-issue " rule. Appellant appealed on the trial court's rulings of the one ground that led to the summary judgment, and the Appellant was thorough in the appeal including all aspects: (1) error in finding expert witness entire testimony based on Res Ipsa Loquuntur (2) error in finding expert witness opinions are not based on reliable medicine of science (3) error in finding expert witness opinions are based purely on speculation and are wholly unreliable and his testimony is excluded: (4) error in trial court granting a summary judgment.

All of the trial court's rulings were based solely on the ground of expert witness testimony, excluding Dr. Wikas' entire testimony, and subsequently, granting a summary judgment, all which were appealed. Respondents attempt to have appeal barred by the "two issue" rule has no worthiness, and is unjust. The "two issue" rule may be applied, where there are two causes of action, &/or two or more grounds thereby raising separate and distinct issues, and that clearly is not the situation in this case.

It is important to emphasize the Order and Respondents brief are misleading, and testimony is taken out of context to fit a merit-less narrative. To grant justice it's imperative that the appellate court read Dr. Wikas testimony in context, in it's entirety. The expert witness testimony can not be understood by the short excerpts, nor excerpts combined in a way that take the truth out of his testimony. His testimony is clear and straightforward, and needs to be heard and acknowledged.

Below are excerpts in the Respondent's brief from the order that manipulates and misrepresents Dr. Wikas testimony. "his opinions are inadmissible on the basis that any probative value is substantially outweighed by the danger of unfair prejudice and would only confuse or mislead the jury as he testified that he gives the exact same injection which was used in this case without

any problem; yet when NP Hussey gave the injection, it inexplicitly [sic] caused Plaintiff's alleged atrophy with no basis for his reasoning other than that an injury occurred." (Order, pp. 19-20). The trial court further found that Dr. Wikas's testimony on causation demonstrated that the injuries sustained by the Appellant were not legally foreseeable, resulting in no liability. (Order, p. 13).

As explained fully in Appellant's initial brief and Dr. Wikas was firm in his testimony, stating he did not believe the injection that NP Hussey wrote on the medical report was true, it was not plausible, and that a higher volume and concentration of kenalog was given that caused the injury. All of his opinions are based on collaborating evidence from Plaintiff's medical records prior to and after the injection, pictures, witness testimony, the side effects of kenalog, examination of Apellatat, and his extensive experience as a dermatologist, and prior profession as a pharmacist. All the facts and evidence contradict that there was a hypertrophic scar, and the alleged dosage Ms. Hussey claims she gave. The May, 3 2016 medical record written by Ms. Hussey is the only place a hypertrophic scar is recorded, and Ms. Hussey has admitted to another error and omission on this same medical record and was cited for this.

Lastly, the Respondents argument to apply the "two issue rule" in this appeal is flawed as everything in the order and summary judgment is based wholly on the expert witness testimony, and all facets are so closely intertwined that the "two issue rule" is inapplicable.

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the Apellant appeals all grounds because the unappealed ground will become the law of the case."); First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)

There is no reason to go outside of the clear line of logic that the entire motion in limine and order is based upon the ground of the expert witness testimony and the exclusion of it.

The definition of Ground from Merriam-Webster Dictionary of Law confirm that it is based upon a reason or collection of data which an argument relies on for validity. All of the trial courts rulings were interconnected and directly correlated to the expert witness' testimony, this was the only reason for the trial court's rulings and summary judgment.

" Ground n 1 : the foundation or basis on which knowledge, belief, or conviction rests : a premise, reason, or collection of data upon which something (as a legal action or argument) relies for validity" Merriam-Webster's Dictionary of Law ©1996

In law, grounds refer to a rational motive, basis for a belief or conviction, for an action taken, such as a legal action or argument; reason or cause. It is the foundation or basis on which knowledge, belief, or conviction rests US Legal Definitions

<https://definitions.uslegal.com/g/ground>

Appellant disputes for all those reasons set forth, and in greater detail her initial brief. Appellant respectfully requests that this Court grant Appellant's appeal in it's entirety, and reverse the Trial Court's Order to exclude Dr. Wikas testimony, and the Order Granting Summary Judgment.

II. The trial court erred by excluding Appellant's medical expert testimony as unreliable and inadmissible.

A. Respondents argue the trial court correctly excluded as unreliable and inadmissible the causation testimony offered by the Dr. Wikas' medical expert witness.

The Respondents' brief solely refers to the exclusion of Dr. Wikas' testimony, as "causation testimony" rather than the "entirety of Dr. Wikas testimony" that was excluded by the trial court.

The Respondents argue that the expert witness did not meet "The Law on Admissibility of Expert Opinion", and that Dr. Wikas relied on "the Doctrine of Res Ipsa Loquitor". This is not true, and it is evident in Dr. Wikas' clear and thorough testimony when reviewed in its entirety.

The Respondents' brief attempts to muddy the waters of this simple and straightforward medical malpractice case, by citing case studies that are not relevant, and taking Dr. Wikas testimony out of context.

Dr. Wikas gave expert witness testimony that properly stated the standard of care, breaches, causation, and the injuries that occurred directly from Ms. Hussey's actions, and he clearly met all requirements for a plaintiff in a medical malpractice case. Dr. Wikas used the term "it speaks for itself" solely to show it was obvious and logical that the injection injured the Appellant by the "egregious" and "catastrophic" actions of the Respondent. The term it speaks for itself, is commonly used and has a widely known meaning of its obvious, clear and evident. Just because Dr. Wikas used this term, it does not invalidate nor nullify all of his testimony, and it is disingenuous for the trial court and Respondents to use this as an argument to exclude Dr. Wikas testimony in its entirety and prevent this case from going to trial. Dr. Wikas gave proper and reliable expert witness testimony stating clearly his opinions which met all the necessary

requirements of a medical expert witness, yet this was overlooked and ignored by the Court and in the Respondents' brief.

A plaintiff in a medical malpractice case in South Carolina must present: "(1) evidence of the generally recognized practice and procedures that would be exercised by competent practitioners in a defendant doctor's field of medicine under the same or similar circumstances; and (2) evidence that the defendant doctor departed from the recognized and generally accepted standards, practices, and procedures in the manner alleged by the plaintiff." *Gooding v. St. Francis Xavier Hospital*, 326 S.C. 248, 487 S.E.2d 596, 599 (1997). and, "the plaintiff must show that the defendants' departure from such generally recognized practices and procedures was the proximate cause of the plaintiff's alleged injuries and damages." *David v. McLeod Regional Medical Center*, 367 S.C. 242, 626 S.E.2 1, 4 (2006).

The trial court and Respondents' brief focus on a small portion of testimony where Dr. Wikas made a reference to "it speaks for itself" which was irrelevant in the light of his extensive testimony that easily met his expert witness obligations. The trial court and Respondents disregarded the fact that Dr. Wikas' testimony is based on his extensive knowledge, education, skill, experience, training and expertise as a dermatologist for nearly four decades, and his experience as pharmacist. The quantity of Dr. Wikas testimony states that Ms. Hussey made at least three breaches of the standard of care, and her negligence by deviating from the standard of care is the causation of the Appellant's injuries, thus exceeding the plaintiff's burden of proof

Dr. Wikas is qualified to testify on everything regarding dermatology and the skin, including wound healing from any kind of surgery. His testimony was clearly reliable and relevant to the case, and it would help lay jurors understand the nature of what the kenalog injection does when

properly injected, and improperly injected. The trial court erred by excluding all of Dr. Wikas' testimony without consideration to the relevance, significance, and most importantly, legitimacy of his professional opinions.

The Respondents argue there was, "No Testimony of "Significant Causal Link" Their brief states. "Additionally, the trial court concluded that "Dr. Wikas did not once testify to a reasonable degree of medical certainty that the Kenalog injected by the Defendant Nurse Practitioner Hussey was most probably the cause of the Plaintiff's atrophy or other alleged side-effects." (Order, p. 7). Notably, the Appellant does not challenge this ruling on causation. " This is a blatant mistruth. The Appellant's initial brief goes into detail citing Dr. Wikas testimony that clearly show he opined with reasonable medical certainty that the "Kenalog injected by the Defendant Nurse Practitioner Hussey was most probably the cause of the Plaintiff's atrophy or other alleged sideeffects." Ms. Hussey caused the Appellant's injuries due to her deviations from the standard of care.

Dr. Wikas opined using his vast experience and knowledge along with the Appellants' medical records, pictures, witness testimony and documents, and of great significance, he also did a thorough physical examination of Ms. Gurry's legs with emphasis on the depression and atrophy where the kenalog was injected. Not only did Dr. Wikas cite Ms. Hussey deviated from the standard of care once, yet he stated she fell below the standard of care a few times, by not giving proper informed consent, by misdiagnosing, and by improper administration of kenalog, and he felt strongly about this, as he adamantly testified Ms. Hussey should have never injected kenalog into a "healing beautifully" young scar.

The Respondent's deviations are the direct cause of the Appellants injury, per expert witness testimony furthermore, if Ms. Hussey had not made a misdiagnosis of a hypertrophic scar, and then proceeded to inject kenalog into a normal healing scar, Appellant would have not been injured.

Likewise, Dr. Wikas testifies to this more than once, making his medical expert opinion very clear, yet this testimony is not mentioned nor recognized by the trial court nor Respondents which is unjust and Dr. Wikas' testimony can no longer be ignored.

"In South Carolina a medical malpractice plaintiff who relies on expert testimony must introduce evidence that the defendant's negligence most probably resulted in the injuries alleged." Jones v. Owings, 318 S.C. 72, 456 S.E.2d 371, 372 (1995).

Again, in the Appellant's initial brief, with her medical expert witness testimony a "significant causal link" between the alleged breach of the standard of care and the injuries suffered is addressed. Dr. Wikas opined with reasonable medical certainty that the injuries sustained were most probably caused by Ms. Hussey deviation from the standard of care a few times. Again, please let it be noted the Respondents brief has short excerpts from Dr. Wikas testimony that are misleading, as they do not represent his entire testimony which cohere to meeting and surpassing all the requirements of an expert witness, and the plaintiff's burden of proof.

Respondents continue their confusing argument stating, Appellant's appeal has not demonstrated the trial court's unreliability and inadmissibility of Dr. Wikas's causation testimony, instead the Appellant focuses on Dr. Wikas's opinions on the deviation from the standard of care.

Respondents state, "But, given the absence of reliable and admissible evidence of causation, the Appellant's medical malpractice claim fails."

This makes no sense, because again Ms. Hussey's deviations from the standard of care was the causation of the Appellant's injuries. It is well known in this arena of law, there must be four elements in a medical malpractice case, and the Appellant planned on educating the jurors about this fact during her opening statement at trial.

The National Library of Medicine article titled " An Introduction to Medical Malpractice in the United States" expands upon the four elements, "The injured patient must show that the physician acted negligently in rendering care, and that such negligence resulted in injury. To do so, four legal elements must be proven: (1) a professional duty owed to the patient; (2) breach of such duty; (3) injury caused by the breach; and (4) resulting damages."

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628513/>

The Respondents numerous attempts to separate Ms. Hussey's deviations from the standard of care, and the causation of appellants injuries, fail as they are directly correlated, and is the very definition of medical malpractice.

Lastly the Respondents argue that "the Appellant does not even attempt to show that Dr. Wikas's trial testimony satisfies the State v. Council test. Instead, she argues that the test is not applicable. She incorrectly insists upon some exemption because "Rule 702 does not mention medical literature or research, as these are not requirements for an expert witness to opine." See, Appellant's Brief, p. 17. She nonetheless concedes that Dr. Wikas cannot satisfy the Council factors, but she argues that "Dr. Wikas explains why these were not used in his testimony for this case." See, Appellant's Brief, p. 17."

First of all, what exactly are the Respondents referring to as the "State V. Council Test"? When searched on Westlaw.com only one case comes up, this one, citing the Respondents' brief, and

this is when searched in, "all states" and "all federal". This solidifies the Respondents misrepresentation and distortion of the law, and the evidence, facts and expert witness testimony in this case, and their arguments must be dismissed, so justice can prevail. There is no need to restate everything in the Appellant's initial brief and expert witness testimony as the appellate court will be reviewing everything on the record.

Unfortunately, again it must be emphasized that the Respondents' brief is littered with mistruths, and short excerpts from both the Appellant's initial brief, and Dr. Wikas' testimony that are misleading, and bare no truth nor relevance, to the reliable medical expert testimony of Dr. Wikas, and the Appellant's brief. Likewise, the Respondents' brief states the Appellant "concedes that Dr. Wikas cannot satisfy the Council factors," this is 100% untrue, and exemplifies the nonsensical aspects and brash mistruths that the Respondents arguments and brief contain.

Dr. Wikas testified in the de bene esse deposition, his expert opinion to the standard of care, the breaches, causation, and injuries Appellant suffered due to the negligence of the Respondent. Dr. Wikas testified about how to administer kenalog which is universally used in dermatology, and based on reliable medicine, pharmacological science, and techniques. He expanded upon the side effects when injected into healthy tissue and skin, which is what he believes happened to the Appellant causing her injures.

Q. How is Kenalog administered into an irregular thick scar, a keloid scar?

A. It's injected. You usually use a small syringe, certainly no bigger than three milliliters or -- and the needle that's used is usually an extremely fine needle, such as a 30-gauge needle. And when you inject the corticosteroid, you inject right into the keloidal tissue, the very thick tissue.

Q. And what happens if Kenalog is injected into healthy tissue and skin?

A. It will lead to thinning of the skin, what we call atrophy is the medical term. It can cause allow for the generation of new small blood vessels, capillaries, that are more obvious as the skin gets thinner

Dr. Wikas' physical examination of Appellant is another example of *reliable medicine and science* he used in determining his opinions on this case.

Q. And moving on, tell us about when you examined me and what was your assessment?

A. Your skin was thin, atrophic. It actually had a chicken skin appearance. There was an accentuation of blood vessels, some of them red, some of them bluish, but the most obvious appearance was a thinning of the skin and a bit of a depression.

Dr. Wikas states what he reviewed for the case, and gives testimony that Ms. Hussey's actions were "well below the standard of care", gave several breaches including misdiagnosis, unnecessary treatment, improper administration of Kenalog, and inadequate informed consent.

Q. What documents have you reviewed in this case?

A. I've reviewed clinical documents, I've reviewed affidavits, I've reviewed depositions, and other materials, a whole host of materials.

Q. What is your opinion of Shannon Hussey's treatment and the standard of care of May 3rd, 2016?

A. I felt that she fell below the standard of care because you had catastrophic thinning of the skin, a depression, accentuation of blood vessels, there was sensitivity to touch, so I felt that her activities were well below the standard of care.

Q. Regarding Shannon Hussey's deviation from the standard of care, please list the breaches.

A. The first breach was misdiagnosis. She diagnosed a hypertrophic scar when there was no hypertrophic scar. It was my impression that she injected too much corticosteroid, probably too deeply, too high a concentration, too large a volume.

Q. And regarding informed consent?

A. I don't feel that there was adequate informed consent given at the time, so I don't feel there was adequate informed consent given. [Dr. Wikas de bene esse Dep. 12: 24-25; 13-15: 1-14]

Dr. Wikas' expert opinion on hypertrophic scars is based on 38 years of dermatology clinical practice, and again reliable medicine. In his testimony he goes into detail about the unnecessary injection Ms. Hussey gave the was the cause of the Appellant's injuries and he rules out that anything else would have caused the injury. This testimony was unjustly overlooked by the trial court and Respondents.

Q: Explain how hypertrophic scars fade with time.

A. Hypertrophic scars can over time just go away by themselves if there's no treatment. A common way to treat a hypertrophic scar is massaging the area using a silicone gel or a sheet. The other option would be to inject a corticosteroid if it doesn't respond to anything.

Q. So you would try the noninvasive approaches before the invasive approach of the Kenalog injection? A. Yes.

Dr. Wikas medical examination of Appellant ruled out any other skin &/or wound disorders, and substantiates his assessment of "catastrophic thinning of the skin" that caused a depression destroying subcutaneous tissue which is a direct cause of Ms. Hussey's negligence. His vast experience as a dermatologist solidifies his opinion that what Ms. Hussey says she injected, and

is written in the medical record can not be true. The pharmaceutical science of kenalog is based on several decades of universal clinical applications in dermatology offices worldwide. Dr. Wikas expands upon his opinion indicating further breach of standard of care by performing an unnecessary treatment on a scar that "was healing absolutely beautifully," and he gives the causation of Appellant's injury.

A. Dehiscence is when a wound comes apart. The other term is ruptures. It totally comes apart, and if we're talking about stitches, the stitches either break open or they eat through the skin. But it's literally when a wound opens up.

Q. Did you see any indication of this when you examined me?

A. No, I didn't.

Q. So Ms. Hussey's narration of the preparation and injection of the corticosteroid, what is your opinion on that?

A. I think the results speak for themselves. I've never seen, Ms. Hussey said she injected 3.3 milligrams of the corticosteroid into the incision site. I've injected that amount of concentration many, many times, literally at least hundreds of times, and I've never seen a wound implode. So, my impression is, in all likelihood, she injected too high a concentration, too high a volume probably, too deep into the underlying tissue.

Q. And did you, the injection that Ms. Hussey did, did you think that that was necessary for any reason?

A. In the photographs that I saw, the wound looked just fine. I saw no indication of a hypertrophic scar, it was healing absolutely beautifully, and I think if no medication was used at all, the scar would have healed fantastically, beautifully, and maybe even not even visible.

[Dr. Wikas de bene esse Dep. 20: 21-25, 21: 1-25, 22: 24-3]

III. The trial court erred in ruling that Dr .Schield Wikas' expert testimony on causation demonstrated that the injuries sustained by the Appellant were not foreseeable.

A. Respondents argue the trial court correctly ruled that Dr. Schield Wikas' expert testimony on causation demonstrated that the injuries sustained by the Appellant were not foreseeable.

Again, the Respondents try to distract and mislead by citing case studies that have no relevance to this case, nor appeal. Specifically, on this argument Respondents use a case study as an example and state, "Thus, in analyzing the issue of foreseeability, courts focus on whether the resulting harm would occur "in the ordinary and normal course of events" as opposed to falling "within the category of the unusual or extraordinary." Nelson v. Piggly

Wiggly, Inc., 390 S.C. 382, 701 S.E.2d 776, 782 (Ct. App. 2010). "

Respondents continue, "That is precisely the circumstances in this case, according to Dr. Wikas." and then blatantly take Dr. Wikas testimony out of context, and it as follows in Respondents' brief:

"Q. And you would agree that injecting 1 cc of 3.3 milligrams of Kenalog, it would not be foreseeable that that's going to cause the depression that Tara Gurry has, correct? A. Yes.

Q. That would not be a natural or probable consequence of injecting that amount of steroid into a scar, correct? A. Correct.

Q. It would be highly unusual, would it not? A. Yes.

Q. Very abnormal, correct? A. Correct. (Wikas Trial Dep., p. 65).

Later, in his own words, Dr. Wikas confirmed that the injuries sustained by the Appellant were a "very rare event." (Wikas Trial Dep., p. 103). "...

Respondent's argument continues, "Dr. Wikas makes it clear that what occurred to the Appellant is not legally foreseeable. It is precisely one of those occurrences that fall "within the category of the unusual or extraordinary." Nelson, 701 S.E.2d at 782. To again quote Dr. Wikas, it was a "very rare event." (Wikas Trial Dep., p. 103). But a "very rare event" or extraordinary occurrence is not actionable in the absence of legal causation. "

The facts, evidence, and Dr. Wikas testimony in it's entirety show that the Respondents' argument has no merit, and they have distorted and manipulated Dr. Wikas' testimony. Most importantly, again I must reference, there is no evidence that what Ms. Hussey wrote on medical record regarding dosage and how she administered it is a fact, to the contrary all the evidence, and there is a lot of it, including the dermatologist the Appellant saw a few weeks after the injection, Dr. Sherertz, who freely signed a statement stating the injection Ms. Hussey gave was below the standard of care, and noted on the medical record the severe atrophy that Appellant suffered after the kenalog injection, and the doctor took pictures too, all of which Dr. Wikas reviewed and used to formulate his expert opinion. Yet Dr. Wikas' astute testimony is all disregarded by the trial court and Respondents' brief. Dr. Wikas was steadfast in his testimony that he did not believe Ms. Hussey injected " 1 cc of 3.3 milligrams of Kenalog" as she noted on the medical record. Therefore, his testimony of, "Q. And you would agree that injecting 1 cc of 3.3 milligrams of Kenalog, it would not be foreseeable that that's going to cause the depression that Tara Gurry has, correct? A. Yes. " Was accurate, and does not fit the order nor Respondents' brief.

Likewise his resolute testimony that she injected too much kenalog, and it was the cause of the Appellant's depression in her leg and injuries fits all the evidence and facts of this case, and makes perfect sense. Therefore, Dr. Wikas testimony of what he strongly believes happened that, Ms. Hussey improper injection of too much kenalog in a normal healing scar, it's foreseeable to cause a depression in Appellants leg. Dr. Wikas stated it was catastrophic and a very rare event what happened to Appellant as it was so "egregious", the injury was significant, and shocking to medical professionals and dermatologists, including Dr. Wikas that were witnesses to the aftermath of the injection.

In the de bene esse Deposition, Dr. Wikas testified about the dosage requirements of kenalog, and his steadfast conviction that it was "Totally unnecessary". "First of all, in the dosage and medication given by Ms. Hussey, it was unnecessary. It should not have been given. " It's disconcerting the trial court and Respondents overlook this substantial testimony every time.

Q. Yes, so if you will explain, it says right here that, "It should be emphasized that the dosage requirements are variable and must be individualized on the basis of the disease under treatment and the response of the patient." How do you do that in your practice when deciding to inject a keloid scar?

A. First of all, in the dosage and medication given by Ms. Hussey, it was unnecessary. It should not have been given. Totally unnecessary. Second of all, you customize the medication, the dosage, the volume, to each individual. It has to be customized. The smallest amount would be the -- and that means smallest amount in terms of concentration, that is the number of milligrams, smallest amount in volume would be the most appropriate. A lot of times, one drop of the medication is sufficient in each injection site, and a lot of times that injection site is one.

Q. Okay. Great. Dr. Wikas, if you would do this, please, and put down the package insert. I want to go ahead and -- you can put that down because you have enough knowledge and even with your background in pharmaceutical education and what not, so I'd like to just move forward. You know enough about Kenalog 10 drug; is that correct?

A. I have sufficient background, yes.

Q. Excellent. So, if you can let me know, as far as the intralesional administration, you've already explained how that is done with a Kenalog scar. If you can let me know about what happens if it's injected to a great volume as well as concentration, what happens to the drug regarding the bodies of fat?

A. The medication, if injected too deep, that means -- when I'm saying too deep, we're talking about a millimeter to 2 millimeters, so if the amount is injected too deep, it will lead to a destruction of the underlying tissue, it will allow for absorption of the medication into blood vessels, into lymphatic vessels. With the destruction, there's a cataclysmic change in the underlying tissues such that they're all destroyed with the atrophic implosion. And there's absorption systemically. So, you do have a local effect, that's correct, but you also have systemic absorption of the medication, which can go to other parts of the body.

Q. And regarding that systemic absorption that goes to the other parts of the bodies, what -- give me some of the adverse effects that you know about on that?

A. Some of the occurrences with injection of corticosteroids such as Kenalog when it becomes systemic can be elevation of blood sugar, it can lead to a decrease in the absorption of calcium, increase in the excretion of calcium, the matrix of bones, which is basically the framework of bones, the proteins are no longer laid down, so it can lead to deterioration of bones and lead to

what's called bone loss. The early one is called osteopenia. It can lead to some effects, emotional effects. It can lead to anxiety, upset. Those are some of the common ones I see.

[Dr. Wikas de bene esse Dep. 23: 7-25, 24: 1-20, 23-25, 25: 1-16, 28: 13-25,]

In Dr. Wikas' testimony, it's evident he is firm and consistent in his opinions. Especially that the treatment was unnecessary, "...medication given by Ms. Hussey, it was unnecessary.", and that what Ms. Hussey say's she injected is improbable, and "the concentration would have to be much higher, and in all likelihood, there was a much greater volume that was injected. So that literally was dissolving the underlying tissues." Dr. Wikas causation testimony is thorough and meticulous, why this was ignored by the trial court and Respondents is perplexing.

Q. I find it very interesting, you've been a dermatologist nearly 40 years; is that correct?

A. Correct

Q. From '84? That would be -- and you have never -- have you ever seen anything like the atrophy that I -and the injury that I got from the injection?

A. No, thank goodness, because that would be considered catastrophic.

Q. So what is your expert opinion on how much she did inject and what dosage?

MS. SCALISE: Object to the form. Calls for speculation.

A. The amount Ms. Hussey said she injected really doesn't jive with the results, because in order to get that kind of result, the concentration would have to be much higher, and in all likelihood, there was a much greater volume that was injected. So that literally was dissolving the underlying tissues.

Q. And so how long do you think corticosteroids, in most situations, an excessive dose of corticosteroid would-- someone would experience side effects?

A. Could be anywhere from one to three months.

Q. And in the situation of my injury and what you've examined and the pictures you've seen, would you think that that would be -- what would you think the side effect duration would be?

A. Well, from the point of view of the depression, that's permanent. So the side effects, we're talking about making a permanent structural change in the skin, probably with an effect on muscles, deterior --loss of muscle and a change in function.

Dr. Wikas, let's move on. Let's move on to Exhibit 10, skin anatomy. You should have a copy of that there.

A. I do. (Plaintiff's Exhibit 10, Anatomy of the Skin Diagram)

Q. Okay. Great. So, this is what you specialize in, correct? You're a doctor of dermatology; this is your forte? A. Yes.

Q. Okay. And so, let's go ahead, so if you'll tell me, what is in skin and subcutaneous tissue?

A. Well, the first thin layer is the epidermis; the second layer is the dermis. Thickness varies with different parts of the body. And under this is subcutaneous fat, and within these areas, you see hair follicles, nerves, lymphatic vessels, oil glands, other vessels. So that's basically what you see in that area.

Q. Okay. So, with my situation and the atrophy and the depression that I received, what was destroyed by that?

A. Everything, below the dermis.

[Dr. Wikas de bene esse Dep. 29: 9-25, 31: 3-25, 32: 1-14, 33: 22-24, 34: 2-25]

IV. The trial court erred by granting the summary judgment.

A. The Respondents argue the trial court correctly ruled on the summary judgment once the causation testimony of the Appellant's expert witness was excluded.

The trial court erred by filing an order to grant summary judgment. This summary judgment was based solely on the exclusion of Dr. Wikas' entire testimony, which was improper as his testimony was based upon facts substantiated by evidence, which is detailed in the Appellant's initial brief and the above arguments. The exclusion of Dr. Wikas testimony was grossly erroneous, and the resulting prejudice was granting summary judgment.

In a medical malpractice action, the plaintiff must establish by expert testimony both the required standard of care and the defendant's failure to conform to the standard, unless the subject matter lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the defendant's conduct. *Pederson v. Gould*, 288 S.C. 141, 341 S.E.2d 633 (1986).

The Appellant has a legitimate Medical Malpractice case, and she has secured the services of an excellent veteran Dermatologist, who provided thorough testimony meeting all the criteria of an expert witness required in South Carolina. The Appellant as a Pro-Se Litigant has extensively educated herself for over 5 years now, and has spent well over fifteen thousand dollars on this case. The Appellant was well prepared to present her case to the trial court and jury, yet was not given the opportunity due to one of the 24 motions in limine that Defense Counsel gave to the judge pre-trial. Appellant simply asks this Court to give her the chance she well deserves, by reversing the the trial court's orders, so she may have her case heard by jurors.

Appellant met her burden of proof, and the expert witness testimony meet all requirements set forth by South Carolina law for a medical malpractice case. The Court erred in granting the Respondents' Motion for Summary Judgment, and not allowing this case to go to trial with an expert witness. For the reasons stated in above, and in the Appellants initial brief, the trial court order granting summary judgment must be reversed.

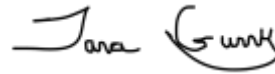
CONCLUSION

For all of the reasons set forth above, as well as those already set forth more fully in Appellant's Initial Brief,

Appellant respectfully requests that this Court grant Appellant's appeal in it's entirety, and reverse the Trial Court's Order Excluding Expert Witness Testimony, and Order Granting Summary Judgment.

May 19, 2022

Respectfully submitted,

A handwritten signature in black ink that reads "Tara Gurry". The signature is written in a cursive style with a large, looped "G" for the last name.

Tara Gurry

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