

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 ORANGEBURG COUNTY) 1ST JUDICIAL CIRCUIT

Malcolm E. Livingston, Jr. as the Personal) Case No. 2018-CP-38-01036
 Representative of the Estate of) Case No. 2018-CP-38-01038
 Rebecca E. Livingston and personally,) Case No. 2018-CP-38-01039

Plaintiff,)

v.)

The Regional Medical Center of)
 Orangeburg and Calhoun Counties)

Defendant,)

**Order Denying Defendant’s
 Motion for Reconsideration or
 To Alter or Amend the Court’s
 February 9, 2022 Order**

This matter is before the Court on the Motion of the Defendant, the Regional Medical Center of Orangeburg and Calhoun Counties (“TRMC”) to Reconsider the Court’s February 9, 2022 Order which granted partial summary judgment to the Plaintiff.

Standard of Review

Rule 59(e), SCRPC provides a mechanism for a party to request that a court review a prior order. In clarifying Rule 59(e), SCRPC, the South Carolina Supreme Court stated that

it is proper to view a Rule 59(e), SCRPC Motion not only as a vehicle to request the trial court “alter or amend the judgement,” but also as a vehicle to seek “reconsideration” of issues and arguments. A Motion under Rule 59(e) long has been viewed as a “Motion for Reconsideration” despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its prior decision even if it means rehashing all or part of an argument previously presented.

Elam v. S. C. Dept. of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778-779 (2004). A party may wish to raise issues in a Rule 59(e) motion that they feel the court may have misunderstood or failed to fully consider. *Elam*, 361 S.C. at 25, 602 S.E.2d at 780. However, a party must file a Rule 59(e) motion to preserve for appeal an issue or argument that has been raised but not ruled on. *Id.*

Discussion

The Defendant's Motion to Reconsider this Court's February 9, 2022 Order raises the same arguments previously raised in opposition to the underlying summary judgment motion. Specifically, the Defendant argues that because there are questions of material fact as to (1) whether the attending physician must be present in the Emergency Department under the Physician Assistant Practice Act ("the Act"), and (2) whether the Defendant breached the standard of care, the Plaintiff is not entitled to partial summary judgment.

The Court's February 9, 2022 Order decided a simple legal issue: whether under the Physician Assistant's Practice Act (hereinafter the "Act"), a supervising physician is vicariously liable for the negligence of a physician's assistant that is practicing under their supervision. If so, is the \$1,200,000 liability cap for physicians under the Tort Claims Act applicable in this case?

This Court ruled that under the Act, a physician's assistant is only allowed to practice if a supervising physician has "accepted responsibility" for the physician's assistant (*see*, S.C. Code Ann. § 40-47-910(8)) and has agreed that the physician's assistant is the agent of the supervising physician "in the performance of all practice related activities . . ." S. C. Code Ann. § 40-47-935 (Supp. 2016). Because the statutory scheme required a principal/agent relationship between a supervising physician and his physician's assistant, the Court ruled that the principal was independently responsible for the acts and omissions of the agent. The facts necessary to reach this conclusion are that (1) the Plaintiff was treated by a physician's assistant in the Defendant's Emergency Room; (2) the physician's assistant was properly licensed under the Act and had a supervising physician; (3) the negligent act or omissions as alleged by the Plaintiff occurred during this treatment. None of these facts are disputed by TRMC.

Vicarious liability means that a party who owes a nondelegable duty remains liable for the negligent acts of others. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 42, 533 S.E.2d 312, 317 (2000) (holding hospital vicariously liable for alleged negligence of independent contractor providing medical services in the emergency department). In this case, this nondelegable duty is further bolstered by the unambiguous language in the Act. Whether a supervising physician must be present in the Emergency Department under the Physician Assistant Practice Act is irrelevant to whether the supervising physician (or in this case, the Governmental Hospital that employs the supervising physician) is vicariously liable for the alleged negligence of the physician's assistant they are supervising.

Vicarious liability does not require the presence of the principal at the locus of the negligent act. *See Wesley v. Holly Hill Lumber Co.*, 211 S.C. 40, 48, 43 S.E.2d 619, 622 (1947) (employer liable for faulty cable); *Conner v. Farmers and Merchants Bank*, 243 S.C. 132, 139-40, 132 S.E.2d 385, 388-89 (1963) (landlord vicariously liable to tenant for fall caused by floor negligently repaired by contractor); *Jenkins v. E. L. Long Motor Lines, Inc.*, 233 S.C. 87, 95-100, 103 S.E.2d 2d 523, 527-29 (1958) (common carrier vicariously liable for injuries caused when an unsecured load shifted during transport). The physical presence of the supervising physician in the emergency room is not required to establish the vicarious liability of TRMC's physician.

Similarly, whether the standard of care was breached or not is not germane to the legal question raised in the Plaintiff Motion for Partial Summary Judgment or the Court's ruling. In the February 9, 2022 Order, this Court simply held that:

The South Carolina Physician Assistants Practice Act clearly and unambiguously establishes an agency relationship between a supervising physician and a physician's assistant. A physician's assistant cannot practice unless a supervising physician has accepted responsibility for the medical services rendered by the physician assistant. Where an agency relationship exists, the principal is independently responsible for the acts and omissions of the agent. Accordingly, the TRMC supervising physician on duty on August

12, 2016 is responsible for the medical care Ms. Livingston received and TRMC cannot reduce its liability cap by claiming that the acts and omissions that injured Ms. Livingston were conducted by a physician's assistant rather than a licensed physician. The very authority that permits a physician assistant to practice in TRMC's emergency room requires that he or she only do so as the agent of a supervising physician who has accepted responsibility for the medical services rendered. Because the supervising physician is liable for the acts and omissions committed by his agent, under the plain terms of the TCA, the \$1,200,000.00 liability cap is applicable to this case. S.C. Code Ann. §15-78-120(a)(3) and (4). Accordingly, the Plaintiff's Motion for Partial Summary Judgment is GRANTED.

(February 9, 2022 Order, p. 5 – footnotes omitted).

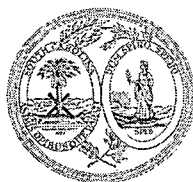
In making this ruling, the Court did not find, nor did it need to find, that there was no question of fact regarding the standard of care. The Court merely held that if the Plaintiff can prove that the standard of care was breached by TRMC's physician's assistant, then under the unambiguous terms of the Act, the supervising physician would be vicariously liable for the acts of his agent and the applicable liability cap in the Tort Claims Act would be governed by S.C. Code Ann. §15-78-120(a)(3) and (4).

The purpose of Rule 59(e), SCRCF to alter or amend a judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits. *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992); *Collins Music Col, Inc. v. IGT*, 353 S.C. 559, 562, 579 S.E.2d 524, 525 (Ct. App. 2002). The Court has considered all arguments raised by TRMC in its original memorandum of law and made at oral argument, as well as the arguments raised in TRMC's Rule 59(e), SCRCF motion and after due consideration of all, denies the arguments made and denies this Rule 59(e), SCRCF motion.

IT IS SO ORDERED.

Entered this This ___ day of May, 2022
Orangeburg, South Carolina

Edgar W. Dickson
Circuit Court Judge
1st Judicial Circuit



Orangeburg Common Pleas

Case Caption: Malcolm E Livingston VS The Regional Medical Center Of
Orangeburg And Calhoun Counti
Case Number: 2018CP3801036
Type: Order/Summary Judgment

So Ordered

s/ Edgar W. Dickson #2153