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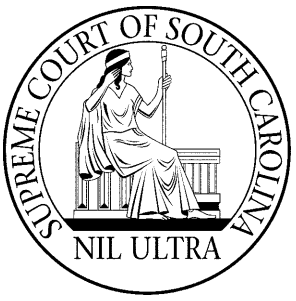
ADVANCING JUSTICE, PROFESSIONALISM AND UNDERSTANDING OF THE LAW.

RE: Lawyers Suspended by the South Carolina Bar

In the 2003 Shearouse Advance Sheets, Volume 9, issued on March 10, 2003, the Supreme Court of South Carolina published a list of lawyers who have been administratively suspended from the practice of law pursuant to Rule 419(c), SCACR. The list had been prepared by the South Carolina Bar. Included therein were G. Dana Sinkler of Charleston and William Moore Jr. of Charlotte. The inclusion of those names was an error. Both Bar members had timely paid their license fees. The Bar regrets the error and apologizes to both members.

Columbia, South Carolina
March 18, 2003



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

FILED DURING THE WEEK ENDING

March 24, 2003

ADVANCE SHEET NO. 11

Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.judicial.state.sc.us

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of the Care And
Treatment of Billy Ray Tucker, Appellant.

Appeal From Aiken County
Rodney A. Peeples, Circuit Court Judge

Opinion No. 25608
Heard February 19, 2003 - Filed March 24, 2003

AFFIRMED

Paul Andrew Anderson, of Maxwell & Anderson, of Aiken; for appellant.

Attorney General Henry Dargan McMaster, Deputy Attorney General Treva Ashworth, Assistant Attorney General Deborah R.J. Shupe, and Assistant Attorney General Steven R. Heckler, all of Columbia; for respondent.

JUSTICE MOORE: Appellant, previously committed pursuant to the Sexually Violent Predator Act, S.C. Code Ann. § 44-48-10 to -170 (2002), appeals the circuit court's finding there was no probable cause to believe his mental abnormality or personality disorder had so changed that he was safe to be at large and was not likely to commit acts of sexual violence. We affirm.

PROCEDURAL FACTS

In 1994, appellant pled guilty to first-degree criminal sexual conduct with a minor for sexually molesting his then six-year-old son. He was sentenced to ten years imprisonment.

In March 2000, a jury found appellant to be a sexually violent predator, and he was committed pursuant to the Sexually Violent Predator Act (the Act). Appellant did not appeal this finding.

Approximately a year later, the Department of Mental Health (the Department) forwarded to the court the results of appellant's annual review. *See* S.C. Code Ann. § 44-48-110 (2002) (person committed pursuant to the Act shall have an examination of his mental condition performed once every year; this report must be provided to the court that committed the person). The court ordered an examination of appellant by an independent expert. As permitted by § 44-48-110, appellant petitioned the court for release from his commitment.

A probable cause hearing was held on the issue whether the results of appellant's annual review warranted a trial to determine if he should be released from commitment.[1] Following the submission of written reports and arguments by counsel, the court found there was no probable cause to believe appellant's mental abnormality or personality disorder had so changed that he was safe to be at large and was not likely to commit acts of sexual violence.

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[1]S.C. Code Ann. § 44-48-110 (2002) states: "If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the court shall schedule a trial on the issue."

ISSUE

Did the court err by finding there was no probable cause to believe appellant's mental abnormality or personality disorder had so changed that he was safe to be released and was not likely to commit acts of sexual violence?

FACTS

At appellant's probable cause hearing, the court was presented with the Department's annual treatment review summary, the results of tests previously administered on appellant, a psychological consultation report from Dr. Carey A. Washington, and a psychiatric evaluation report from Dr. Thomas V. Martin.

The annual review summary indicated appellant was diagnosed with pedophilia, limited to incest. After several months of treatment, appellant admitted to sexually molesting his youngest son and took more responsibility for his aberrant sexual behavior. The summary noted appellant, who was a cooperative and active participant in his treatment, had met some treatment plan goals and was working on meeting other goals. The Department recommended that appellant continue in residential treatment to address several treatment concerns.

Appellant was administered a Penile Plethysmograph (PPG), which is designed to measure sexual responsiveness to a variety of stimuli across gender, age, and sexual activity. The PPG suggested female and male preschoolers (ages two to four years) aroused appellant.

Appellant was also administered the Abel Assessment for Sexual Interest (ASI), which measures whether someone is aroused by something that is considered abnormal, such as pedophilia. This test indicated appellant was interested in two-to-four-year-old females and eight-to-ten-year-old females and males.

Appellant was also evaluated according to the Static-99 test. The Static-99 is a brief actuarial instrument designed to estimate the probability of sexual and violent recidivism among adult males who have already been convicted of at least one sexual offense against a child or non-consenting adult. According to the Static-99, appellant received a score of 3, which is consistent with a medium-low risk category for re-offending.

Dr. Carey Washington, a licensed counseling psychologist, concluded that appellant's "return to the community, if such is achieved, would be favorable with restrictions." Dr. Washington stated appellant presents "some concern and remorse about his behavior that possibly, over a period of time, could be resolved and worked more favorably towards him."

Dr. Thomas Martin, a psychiatrist, noted that appellant, after several months of intense treatment, "broke through his denial and took responsibility for the sexual offense against his youngest son." Dr. Martin set out reasons for releasing appellant to an outpatient setting and reasons for continuing to confine appellant for treatment. Dr. Martin found appellant was capable of and motivated towards continuing sex offender treatment in the outpatient setting. He stated the outpatient treatment would have to be long-term and meet at least weekly. Dr. Martin also recommended that appellant would need to take Zoloft, an antidepressant used to decrease an inappropriate sex drive. Dr. Martin did not conclude, in the language of the statute, that appellant's mental abnormality or personality disorder had so changed that he was safe to be at large and, if released, was not likely to commit sexually violent acts.

DISCUSSION

On review, the appellate court will not disturb the hearing court's finding on probable cause unless found to be without evidence that reasonably supports the hearing court's finding. *See* *In re* Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002) (citing Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)) (on appeal of non-jury law case, findings of fact will not be disturbed unless found to be without evidentiary support).

In a § 44-48-110 probable cause hearing, the committed person has the burden of showing the hearing court that probable cause exists to believe that his mental condition has so changed that he is safe to be released. *See* People v. Hardacre, 109 Cal. Rptr. 2d 667 (Cal. App. 2 Dist. 2001) (at show cause hearing, committed person must establish probable cause to believe his mental condition has changed so that he is no longer a danger to others). Appellant did not meet this burden at the probable cause hearing.

According to the Department's annual review summary, appellant had progressed in his treatment by meeting certain treatment goals, such as admitting the sex offense against his son; however, there were several other treatment goals appellant still had not met. The Department recommended appellant continue in residential treatment.

Dr. Washington reported appellant could be released from commitment in the future, but the release would have to include restrictions. Dr. Martin reported appellant could be released from commitment to long-term outpatient care as long as he was treated on a regular basis and was administered Zoloft.

Appellant did not present evidence to show there is probable cause to believe his mental condition has so changed that he is safe to be released. The Department and Dr. Washington both reported appellant was not ready to be released, although he has made progress in his treatment. While evidence exists that appellant could be released to long-term outpatient care that meets on a regular basis, there is no evidence that appellant's mental condition had so changed that he is safe to be at large and, if released, unlikely to commit sexually violent acts.

Because there is evidence that reasonably supports the hearing court's finding of no probable cause, we affirm the decision of the hearing court. **AFFIRMED.**

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Fletcher C. Mann, Jr., Respondent.

Opinion No. 25609
Submitted February 25, 2003 - Filed March 24, 2003

PUBLIC REPRIMAND

Henry B. Richardson, Jr., and Senior Assistant Attorney General James G. Bogle, Jr., both of Columbia, for the Office of Disciplinary Counsel.

Oscar W. Bannister, of Greenville, for Respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of a public reprimand. We accept the agreement and publicly reprimand respondent.

Facts

I. Failure to Comply With Order of Destruction

Respondent, in his role as Clerk of Court for Greenville County, was ordered to destroy, or witness the destruction of, certain weapons

submitted as criminal exhibits in general sessions court. Respondent delegated responsibility for destruction of the firearms to certain individuals, including a Deputy Sheriff, who ultimately kept certain firearms for themselves. Respondent did not witness the destruction of the weapons, did not comply with the court order, did not seek clarification of the order for three years, and did not prevent the personnel to whom he delegated destruction of the weapons from taking the weapons for their own personal use.

Respondent was held in criminal contempt for failing to comply with the order of destruction. This Court reversed the Circuit Court's order holding respondent in contempt, but stated the following in its opinion:

> Mann's conduct in delaying any attempt to comply with or seek clarification of the Order for three years was irresponsible. Mann's failure to assure that his staff did not violate the statutes by taking the weapons for their own purposes clearly demonstrates that Mann was not faithful to his statutory responsibilities.

County of Greenville v. Mann, 347 S.C. 427, 436, 556 S.E.2d 383, 388 (2001).

II. Electronic Surveillance of a Circuit Court Judge

Respondent directed an employee to connect a video recorder to the main video security system for the Greenville County Courthouse and videotaped a Circuit Court Judge without the knowledge and permission of the Judge. Respondent also directed a member of his staff to take a video camera off the premises of the courthouse and videotape the same Circuit Court Judge. This videotaping, which occurred on one occasion, was also done without the knowledge and permission of the Judge.

III. Racial Slur

In a private discussion with members of his staff concerning instructions or directives from a Circuit Court Judge, respondent stated, in effect, that if he tried to second guess a judge he would be perceived as though he were "an uppity nigger on an old south plantation." Respondent apologized to a staff member who was offended by the remark and later issued a public apology.

Law

Respondent's conduct constitutes violations of the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 8.4(a)(it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct); Rule 8.4(d)(it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e)(it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice). Respondent has also violated the following provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1)(it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct); Rule 7(a)(6)(it shall be a ground for discipline for a lawyer to violate the oath of office taken upon admission to practice law in this state); and Rule 7(a)(7)(it shall be a ground for discipline for a lawyer to willfully violate a valid court order issued by a court of this state).

Conclusion

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his actions.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Former Jasper County Magistrate Joyce Lynn Leavell, Respondent.

Opinion No. 25610
Submitted March 11, 2003 - Filed March 24, 2003

PUBLIC REPRIMAND

Henry B. Richardson, Jr., and James G. Bogle, Jr., of Columbia, for the Office of Disciplinary Counsel.

Charles B. Macloskie, of Beaufort, for Respondent.

PER CURIAM: In this judicial disciplinary action, respondent, a former Jasper County Magistrate, admits she committed acts of misconduct in violation of the Code of Judicial Conduct, Rule 501, SCACR, consents to a public reprimand, has agreed to resign and agreed not to apply for any judicial office in the State of South Carolina without the prior consent of this Court.[1] A Subpanel of the Commission on Judicial Conduct recommended respondent be publicly reprimanded and prohibited from applying for a judicial position within the unified judicial system of the State of South Carolina without prior consent of this Court. The Full Panel of the Commission on Judicial Conduct adopted the Subpanel report in its entirety.

[1] Respondent submitted her resignation to the Governor of South Carolina. Respondent's resignation was accepted and became effective October 25, 2002.

We agree respondent has committed judicial misconduct and that a public reprimand, the most severe sanction we are able to impose in these circumstances, is the appropriate sanction.

Facts

I. Bond Matter

Respondent received a $400 bond payment from an individual. On or about June 25, 1999, the individual executed an "Assignment of Bond," assigning the $400 to his attorney. However, respondent failed to promptly transmit the payment to the Jasper County Clerk of Court.

On or about March 7, 2000, a representative from the Clerk of Court's Office spoke with respondent, who promised to comply with the "Assignment of Bond." Instead, respondent submitted a check for $400, drawn on her magistrate's account, to the Clerk of Court. Between May 18, 1999, and March 14, 2000, respondent made five deposits into her magistrate's account, each of which contained entries for cash in excess of $400. None of the deposit slips identified the source of the cash. The first of the deposit slips, which could have included the bond money at issue, was dated November 22, 1999. By not identifying the cash entries on the three deposit slips dated after November 9, 1999, respondent failed to follow the provisions of this Court's November 9, 1999 order regarding financial record keeping.

II. Warrant Matter

On August 25, 2000, respondent accepted $250 from an individual to withdraw a warrant. Respondent issued a receipt identifying the purpose of payment as "Court Cost/Return Warrant."

During questioning by Disciplinary Counsel pursuant to a Notice to Appear, respondent testified she often charged varying amounts to people who wished to withdraw arrest warrants. The amounts varied from $50, for a

simple assault case, up to $250. There is no authority, statutory or administrative, to charge such a fee.

III. County Audit Matter

An audit of Jasper County was conducted for the fiscal year ending June 30, 2000. The audit included respondent's office. The audit noted the following deficiencies in respondent's office: (a) no cash disbursements or cash receipts were maintained; (b) deposits were entered on check stubs; (c) bank reconciliations were not prepared; (d) old outstanding checks were not investigated; and (e) monthly remittance reports were not made available. The effect of these conditions was a lack of accounting procedures that provided no controlled environment for accountability.

IV. Disqualification Matter

Before becoming a magistrate in 1995, respondent worked as a legal secretary for Gary Brown, who practiced in Jasper County until retiring in 1999. In 1998, respondent acquired from Mr. Brown a 1975 Rolls-Royce four-door sedan, which Mr. Brown had purchased in 1992 for $22,500. Mr. Brown appeared before respondent twice in 1999, representing the landlord in a landlord-tenant matter, and a defendant at a preliminary hearing. Respondent did not disclose on the record at either of the hearings the receipt of the vehicle from Mr. Brown, nor her employment with him.

V. Vehicle Matter

Respondent, as Chief Magistrate in Jasper County, prepared a Court Order and Magistrate's Bill of Sale, dated July 29, 1999, for the aforementioned vehicle. The document was signed by Judge Donna D. Lynah, a part-time magistrate in Jasper County at the time.[2] Respondent was never a proprietor, owner, or operator of a business where vehicles are stored,

[2] On October 6, 2000, Judge Lynah was placed on interim suspension for her role in this matter. In re Lynah, 342 S.C. 617, 539 S.E.2d 60 (2000). On June 11, 2001, this Court suspended Judge Lynah for nine months, retroactive to the date of her interim suspension. In re Lynah, 345 S.C. 414, 548 S.E.2d 218 (2001).

garaged, or repaired, nor was she a person who repaired vehicles or furnished material for their repair or storage. Only individuals in those capacities may apply for a magistrate sale of a vehicle pursuant to S.C. Code Ann. § 29-15-10 (1991). The document indicated that public notice had been given that the vehicle would be sold pursuant to section 29-15-10 for "Accrued Charges," in the amount of $3,000, allegedly incurred by respondent. The Magistrate's Bill of Sale stated the vehicle had been sold to respondent for $30 on September 2, 1999, at a public auction. The "Accrued Charges" listed on the Magistrate's Bill of Sale were charges incurred by respondent for repairs made on the vehicle; however, the person who allegedly made the repairs was not a party to the Court Order and Magistrate's Bill of Sale.

Section 29-15-10 requires that written notice be given to the owner of the vehicle prior to sale, that the magistrate insure that the owner has been notified prior to the vehicle being sold, and that the magistrate have advertised the vehicle for at least fifteen days by posting a notice in three public places. None of these requirements were met.

Respondent represented to Judge Lynah that Mr. Brown was aware of respondent's request for a Magistrate's Title and that a Magistrate's Title for the vehicle was necessary because Mr. Brown had misplaced the title to the vehicle. Without Mr. Brown's knowledge or consent, respondent asked Judge Lynah to conduct a judicial sale of the vehicle and to issue a Magistrate's Title to the vehicle in respondent's name. Respondent paid no money to Judge Lynah in exchange for a Magistrate's Bill of Sale. No fee of $30 was paid to Judge Lynah for a public auction, as maintained by respondent, and no public auction was held. However, respondent falsely represented to the Department of Revenue that she had paid $30 for the vehicle and, accordingly, paid casual excise tax in the amount of $1.50. Respondent then applied to the Department of Public Safety to have the vehicle titled in her name. A certificate was issued to respondent on September 8, 1999.

Mr. Brown brought a claim and delivery action against respondent, and others, to retrieve the vehicle. Mr. Brown executed an affidavit for claim and delivery stating that he was the lawful and registered

owner of the vehicle and had not given, nor sold, it to respondent. Following a hearing on October 11, 2000, a circuit court judge issued an order directing respondent to return the vehicle to Mr. Brown without delay. The case was later settled. Mr. Brown agreed to dismiss the action with prejudice in exchange for respondent returning permanent possession and title of the vehicle to Mr. Brown. When respondent failed to return the title, after verbal requests and a written demand, counsel for Mr. Brown filed a Motion to Compel Settlement. Thereafter, respondent signed title of the vehicle over to Mr. Brown.

VI. Disclosure Matter

Respondent failed to disclose receipt of the aforementioned vehicle in her Rule 501, SCACR, disclosure statements for the calendar years 1998 and 1999.

Law

Respondent has violated the following Canons of the Code of Judicial Conduct, Rule 501, SCACR: Canon 1(A) (a judge shall uphold the integrity and independence of the judiciary); Canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities); Canon 3(A) (a judge shall follow certain standards in the performance of the judge's duties); Canon 3(C)(1) (a judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business); Canon 3(C)(2) (a judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties); Canon (3)(C)(3) (a judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the proper performance of their judicial responsibilities); Canon 3(E)(1) (a judge shall disqualify herself in a proceeding in which the judge's impartiality might reasonably be questioned); Canon 3(F) (a judge disqualified by the terms of Section 3E may disclose on

the record the basis of the judge's disqualification and ask the parties to consider whether to waive jurisdiction; if the parties agree the judge should not be disqualified, and the judge is willing to participate, the judge may participate in the proceedings, but the agreement shall be incorporated in the record of the proceeding); Canon 4(A)(1) (a judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge); Canon 4(A)(2) (a judge shall conduct all of the judge's extra-judicial activities so that they do not demean the judicial office); Canon 4(D)(1) (a judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position); Canon 4(D)(5) (a judge shall not accept a gift, bequest, favor or loan from anyone except in limited circumstances); Canon 4(H) (a judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, but the judge must report the receipt of the compensation). By violating these Canons, respondent has also violated Rule 7(a)(1) of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR.

Conclusion

Respondent has fully acknowledged that her actions were in violation of the Code of Judicial Conduct and the Rules for Judicial Disciplinary Enforcement. We agree with the Commission on Judicial Conduct that a public reprimand is the appropriate sanction because it is the only sanction that can be imposed in this matter given the fact that respondent has resigned her position as a magistrate. Respondent is hereby publicly reprimanded for her conduct. Moreover, respondent shall not hereafter seek another judicial position in South Carolina unless first authorized to do so by this Court. Finally, respondent is hereby ordered to pay the costs of these disciplinary proceedings to the Commission on Judicial Conduct within thirty days of the date of this opinion.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Kimberli C. Aboyade, Respondent.

Opinion No. 25611
Submitted March 10, 2003 - Filed March 24, 2003

DISBARRED

Henry B. Richardson, Jr., and Barbara M. Seymour, both of Columbia, for the Office of Disciplinary Counsel.

Kimberli C. Aboyade, of Homestead, Pennsylvania, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of any sanction set forth in Rule 7(b), RLDE, Rule 413, SCACR. We accept the agreement and disbar respondent from the practice of law in this state. The facts, as set forth in the agreement, are as follows.

Facts

Respondent, a 1999 graduate of the University of South Carolina School of Law, prepared a false transcript of her law school grades. She

changed C's she received in twelve courses to A's and B's and changed her grade point average from a 2.96 to a 3.505. Respondent submitted the false transcript to law firms in several states, all of which hired her in partial reliance upon the representations in the transcript.

In response to initial inquiries from the Office of Disciplinary Counsel, respondent submitted a false affidavit. In addition, in responding to questions under oath pursuant to Rule 19(c)(4), RLDE, Rule 413, SCACR, respondent provided false testimony with regard to the creation and distribution of the false transcript. Respondent now admits the false transcript was created and distributed with the intent to deceive potential employers and was specifically designed to pass as accurate and legitimate.

Law

Respondent admits that by her conduct she has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 8.1(b)(a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter); Rule 8.4(a)(it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct); Rule 8.4(b)(it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); Rule 8.4(c)(it is professional misconduct for a lawyer to engage in conduct involving moral turpitude); Rule 8.4(d)(it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e)(it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).

Respondent also admits that she has violated the following provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1)(it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct) and Rule 7(a)(5)(it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or to engage in conduct demonstrating an unfitness to practice law).

Conclusion

We accept the Agreement for Discipline by Consent and disbar respondent. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30 of Rule 413, SCACR, and shall also surrender her Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Albert Schulmeyer, on behalf of himself and all others similarly situated, Plaintiffs,

v.

State Farm Fire and Casualty Company, Defendant.

CERTIFIED QUESTIONS

Chief Judge Joseph F. Anderson, United States District Court for the District of South Carolina

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Opinion No. 25612
Heard February 19, 2003 - Filed March 24, 2003

CERTIFIED QUESTION ANSWERED

Joseph Preston Strom, Jr., L. Henry McKellar, and Mario A. Pacella, all of the Strom Law Firm, L.L.C., of Columbia, for Plaintiffs.

C. Mitchell Brown, of Nelson, Mullins, Riley & Scarborough, L.L.P., of Columbia; Michael T. Cole and John S. Slosson, both of Nelson, Mullins, Riley & Scarborough, L.L.P., of Charleston, for Defendant.

Darra W. Cothran and Edward M. Woodward, Jr., both of Woodward, Cothran & Herndon, of Columbia, for Amicus Curiae National Association of Independent Insurers.

Fred Thompson, III, of Ness, Motley, of Mt. Pleasant, for Amicus Curiae Donna Norrie, Heather Plunkett and Sandra Orvig.

JUSTICE BURNETT: We agreed to answer the following questions certified by the United States District Court for the District of South Carolina:

I. Does State Farm's South Carolina automobile policy obligate it to compensate an insured making a comprehensive or collision claim for any diminution in market value where there is no dispute that the vehicle was adequately restored to its pre-accident level of performance, appearance, and function?

II. If the answer to the previous question is yes, is Plaintiff bound by the appraisal provision within the insurance policy?

FACTS

The facts are not disputed. Albert Schulmeyer ("Schulmeyer") sustained damages to his automobile as the result of an accident. A State Farm Fire and Casualty Company ("State Farm") adjustor estimated the loss at $3,268.02. State Farm paid the amount of the loss minus the deductible.

Schulmeyer admits his vehicle was fully and properly repaired. However, Schulmeyer asserts State Farm failed to

compensate him for an additional $1,000 in "diminished value" to the vehicle, which occurred as a result of the accident.

I

Diminished Value

Schulmeyer asserts State Farm is obligated to pay for any diminishment in value of his vehicle beyond the cost of repairs. Schulmeyer relies on Campbell v. Calvert Fire Ins. Co., 234 S.C. 583, 109 S.E.2d 572 (1959), and Lumpkin v. Allstate Ins. Co., 251 S.C. 19, 159 S.E.2d 852 (1968).

In Campbell, plaintiff claimed and judgment was entered for the total loss of his vehicle. As there was no evidence to support the award, this court reversed the trial court and remanded the matter for further action. In the opinion this Court wrote:

> It follows from the foregoing that where there is a partial loss and the automobile can be repaired and restored to its former condition and value, the cost of repairs is the measure of liability, less any deductible sum specified in the policy. But if, despite such repairs, there yet remains a loss in actual value, estimated as of the collision date, the insured is entitled to compensation for such deficiency.

Id. at 591, 109 S.E.2d at 576-77.

Campbell is distinguishable from the present case. The State Farm insurance contract is more specific in its obligations than is the Campbell contract. The Campbell contract provided:

> The limit of the company's liability for loss shall not exceed either

(1) the actual cash value of the automobile, or if the loss is of a part thereof the actual cash value of such part, at time of loss or
(2) what it would then cost to repair or replace the automobile or such part thereof with other of like kind and quality, with deduction for depreciation, or

(3) the applicable limit of liability stated in the declarations.

Campbell 234 S.C. at 589, 109 S.E.2d at 576.

The State Farm contract at issue provides:

The limit of our liability for loss to property or any part of it is the lower of:

1. the actual cash value; or
2. the cost of repair or replacement

Actual cash value is determined by the market value, age and condition at the time the loss occurred. Any deductible amount that applies is then subtracted.

The State Farm policy defines the term "cost of repair or replacement" as:

1. the cost of repair or replacement agreed upon by you and us;

2. a competitive bid approved by us; or

3. an estimate written based upon the prevailing competitive price . . . [which] means prices charged by a majority of the

> repair market in the area where the car is to be repaired . . .

Additionally, the State Farm policy explicitly reserves the insurer's right to indemnify the insured "for the loss in money or may repair or replace the automobile or such part thereof, as aforesaid."

Beyond the difference in the degree of specificity, we note the Campbell court failed to apply traditional principles of contract interpretation in construing the insurance contract.

The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992). Parties to a contract have the right to construct their own contract without interference from courts to rewrite or torture the meaning of the policy to extend coverage. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. See United Dominion, supra. When a contract is unambiguous a court must construe its provisions according to the terms the parties used; understood in their plain, ordinary, and popular sense. C.A.N. Enter., Inc. v. South Carolina Health and Human Servs. Fin. Comm'n, 296 S.C. 373, 373 S.E.2d 584 (1988).

An insurance contract is read as a whole document so that "one may not, by pointing out a single sentence or clause, create an ambiguity." Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976). The meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and

considering the context and subject matter of the insurance contract. Id.

Rather than applying these principles, Campbell quoted a Texas case[1] to define "repair" and "replace" to mean "the restoration of the automobile to substantially the same condition in which it was immediately prior to the collision", while noting "it would not be restored to the condition if the repair left the market value of the automobile substantially less than the value immediately before the collision." Campbell, 234 S.C. at 592, 109 S.E.2d at 576. The differing policy languages between the Campbell contract and the more specific language in the State Farm Contract combined with the requirement we apply traditional principles of contract interpretation render a contrary result from Campbell.[2]

Schulmeyer seeks to recover for diminution of his vehicle's value. The question is: under the insurance contract "must the insurer pay for damage which is not repairable but which nonetheless results in a diminution in value of the insured automobile?" See Carlton, 32 S.W.3d at 462. Because Campbell does not control our decision, we have reviewed authorities of other jurisdictions

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[1] American Stand. Cnty Mut. Ins. Co. v. Barbee, 262 S.W.2d 122, 123 (Tex. Ct. App. 1953), disapproved of on other grounds by Luna v. North Star Dodge Sales, Inc., 667 S.W.2d 115 (Tex. 1984).

[2] Likewise, Lumpkin is not binding as precedent. In Lumpkin, this Court applied the Campbell rule in dicta within a case concerning the tort of conversion. The Lumpkin Court decision did not involve the interpretation of the language of an insurance contract.

There is split authority over whether a plaintiff should be allowed to recover diminished value beyond the cost of repairs, with the recent trend disfavoring the claim.[3]

The minority view espoused most recently by the Georgia Supreme Court in State Farm Mut. Auto. Ins. Co. v.

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[3] See, e.g., Driscoll v. State Farm Mut. Auto. Ins. Co., 227 F. Supp. 2d 696 (E.D. Mich. 2002); Pritchett v. State Farm, 834 So.2d 785 (Ala. Ct. App. 2002); Johnson v. State Farm Mut. Auto. Ins. Co., 754 P.2d 330 (Ariz. 1988); Ray v. Farmers Ins. Exch., 246 Cal. Rptr. 593 (Cal. Ct. App. 1988); Siegle v. Progressive Consumers Ins. Co., 788 So.2d 355 (Fla. Ct. App. 2001); General Accident Fire & Life Assur. Corp. v. Judd, 400 S.W.2d 685 (Ky. 1966); Campbell v. Markel Am. Ins. Co., 822 So.2d 617 (La. Ct. App. 2001); Townsend v. State Farm Mut. Auto. Ins. Co., 793 So.2d 473 (La. Ct. App. 2001); Carlton v. Trinity Universal Ins. Co., 32 S.W.3d 454 (Tex. Ct. App. 2000); Bickel v. Nationwide Mut. Ins. Co., 143 S.E.2d 903 (Va. 1965). For cases supporting the right to recover for diminution in value see MFA Ins. Co. v. Citizens Nat'l Bank of Hope, 545 S.W.2d 70 (Ark. 1977); State Farm Mut. Auto. Ins. Co. v. Mabry, 556 S.E.2d 114 (Ga. 2001); Venable v. Import Volkswagen, Inc., 519 P.2d 667 (Kan. 1974); Potomac Ins. Co. v. Wilkinson, 57 So.2d 158 (Miss. 1952); Barton v. Farmers Ins. Exch., 255 S.W.2d 451 (Mo. Ct. App. 1953); Eby v. Foremost Ins. Co., 374 P.2d 857 (Mont. 1962); National Farmers Union Prop. & Cas. Co. v. Watson, 298 P.2d 762 (Okla. 1956); Dunmire Motor Co. v. Oregon Mut. Fire Ins. Co., 114 P.2d 1005 (Or. 1941); Senter v. Tennessee Farmers Mut. Ins. Co., 702 S.W.2d 175 (Tenn. Ct. App. 1985). See also L.S. Tellier, Annotation, "Measure of Recovery By Insured Under Automobile Collision Insurance Policy," 43 A.L.R.2d 327 (1955) - (Supp. 2001) (providing an overview of state law in such cases).

Mabry, 556 S.E.2d 114 (Ga. 2001), allows recovery for diminution in value. The Georgia court relied on public policy exceptions inherent in Georgia insurance contracts which are not applicable under South Carolina law. Specifically, the Georgia court based its decision on the understanding implicitly imported into each Georgia insurance contract that loss due to physical damages encompasses both utility and value. As such, an insurer is obligated under Georgia law to pay the cost of repairs and diminution in value.

No similar public policy applies to insurance contracts in this state. Rather this Court is required to give effect to the plain meaning of the words in an unambiguous contract. See United Dominion, supra.

The majority of states to recently address the issue deny recovery for diminution in value. These courts rest their decisions on the rationale the terms "repair" and "replace" are not ambiguous when viewed in light of the entire contract. See, e.g., Siegle, supra. As such they apply, as we must, the commonly used definition of those words to limit any such recovery.

Generally, "repair" means "[t]o mend, remedy, restore, renovate . . . [t]o restore to a sound or good state after decay, injury, dilapidation, or partial destruction." Black's Law Dictionary 1298 (6th ed.1990); see also Webster's II New College Dictionary 939 (1995) ("repair" means "[t]o restore to sound condition after damage or injury . . ."); Merriam-Webster's Collegiate Dictionary 991 (10th ed.1999) ("repair" means "to restore by replacing a part or putting together what is torn or broken").

In the context of an insurance contract the word "replace" means the insurer will "restore [the insured's vehicle] to a former place or position," or "take the place of . . . as a

substitute or successor." See Siegle, 819 So.2d at 736; see also Merriam-Webster's Collegiate Dictionary 992 (10th ed.1999).

There is no concept of value in the ordinary meaning of these words. See Carlton, supra; Markel, 822 So.2d at 627 ("To interpret the word 'repair' as encompassing the diminished value of an automobile would go beyond the word's plain meaning."). As such the majority view disfavors imparting the concept of value into "repair or replace" provisions to require an insurer pay for the loss of value as a result of an accident. Carlton, 32 S.W.3d at 464 ("Ascribing to the words 'repair or replace' an obligation to compensate the insured for things [i.e., diminished market value] which, by their very nature, cannot be 'repaired' or 'replaced' would violate the most fundamental rules of contract construction.").

The State Farm policy sub judice does not recognize value as inherent in the concept "repair or replacement." The policy recognizes the cost of repair or replacement may be determined by a rate agreed between insurer and insured; a competitive bid approved by the insurer; or an estimate based upon the prevailing competitive market price. The policy, read as a whole, defines repair or replacement as restoring the vehicle to pre-accident mechanical function and condition and not as restoring value.

To read value into the repair clause would arbitrarily read out of the policy the insurer's right to determine whether to repair the vehicle or to pay for its loss. Bickel, 143 S.E.2d at 906. The language provision in the present case expressly limits coverage to the lesser of the actual value or the cost of repair. These are alternatives, which do not include an additional obligation to pay for diminished value when the cost of repair is chosen. "Reading into the cost of repair a requirement to also pay for diminished value would render the limitation provision meaningless, as the insurer would essentially always pay for the

value of the car." Driscoll, 227 F. Supp. 2d at 707; see also Ray, 246 Cal.Rptr. at 596.[4]

Certified Question Answered.

TOAL, C.J., MOORE, WALLER and PLEICONES, JJ., concur.

[4] Because of our answer to the first certified question, we do not address the second question.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Jody Lee Haselden, as Personal Representative of the Estate of Carolyn H. Hill, deceased, Respondent,

v.

S. Perry Davis, M.D., Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Sumter County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 25613
Heard April 2, 2002 - Filed March 24, 2003

AFFIRMED

Charles E. Hill and Teresa A. Arnold, both of Turner, Padget, Graham & Laney, of Columbia, for Petitioner.

Larry C. Brandt and Leslie Jay Shayne, of Walhalla, for Respondent.

Gray T. Culbreath, of Collins & Lacy, of Columbia, for Amicus Curiae South Carolina Defense Trial Attorneys Association.

George R. Burnett, of Columbia, for Amicus Curiae The South Carolina Department of Health and Human Services.

JUSTICE WALLER: We granted a writ of certiorari to review the Court of Appeals' opinion in Haselden v. Davis, 341 S.C. 486, 534 S.E.2d 295 (Ct. App. 2000). We affirm.

FACTS

These are wrongful death and survival actions brought by the estate of Carolyn Hill (Hill), who died of breast cancer in 1994. The complaints alleged her treating physician, Petitioner S. Perry Davis, M.D. (Davis), was negligent in failing to timely read a suspicious mammogram, which had been performed on Hill in November 1991. As a result, Hill's breast cancer was not diagnosed until June 1993, by which time it had metastasized into her lymph nodes.[1]

At trial, the court allowed introduction of $77,905.21 in medical expenses billed to Hill. Davis argued that only those amounts actually paid by Medicaid should be admitted into evidence, for a total of $24,109.04. The difference between the "billed" amounts and the amounts actually "paid" by Medicaid, totaled $51,620.59. The jury awarded a total of $1,082,103.71 to Hill's statutory beneficiaries and $1,000,000.00 to her estate. The Court of Appeals affirmed.

ISSUE

Is evidence of amounts billed by a treating physician admissible to establish a medical malpractice plaintiff's damages, where the plaintiff is a Medicaid patient who is not liable for any amounts billed in excess of the amount paid by Medicaid?

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[1] A more detailed recitation of the facts is set forth in the Court of Appeals' opinion.

DISCUSSION

Davis argues the trial court should have limited Hill's recovery for medical expenses to those amounts actually paid by Medicaid. We disagree. We find both the amount of the Medicaid payment and the amount billed by Doctor Davis were admissible[2] to establish the amount of Hill's damages.[3]

A plaintiff in a personal injury action seeking damages for the cost of medical services provided to him as a result of a tortfeasor's wrongdoing is entitled to recover the reasonable value of those medical services, not necessarily the amount paid. 22 Am. Jur. 2d Damages, § 198 (1988). Although the amount paid may be relevant in determining the reasonable value of those services, the trier of fact must look to a variety of other factors in making such a finding. Among those factors to be considered by the jury are the amount billed to the plaintiff, and the relative market value of those services. Kashner v. Geisinger Clinic, 638 A.2d 980 (Pa. 1994). Clearly, the amount actually paid for medical services does not alone determine the reasonable value of those medical services. Nor does it limit the finder of fact

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[2] It is unclear, from footnote 25 of the Court of Appeals' opinion, whether the amount of Medicaid payments was placed before the jury. Haselden, 341 S.C. at 507, 341 S.E.2d at 306, n. 25. As we read the colloquy between the trial court and counsel, the court appears to have ruled that the amounts paid by Medicaid were admissible, but that they did not, under the collateral source rule, reduce the defendants' liability. ROA pp. 215-217. Indeed, the trial court instructed the jury that it could not consider any compensation received by the plaintiff from a third party to lessen the defendants' liability.

[3] We concur with Davis that the collateral source rule applies to Medicaid payments. See e.g., Davis v. Management & Training Corp. Centers, 2001 WL 709380 (D. Kan. May 30, 2001); Williamson v. Odyssey House, Inc., 2000 DNH 238, 2000 WL 1745101 (D.N.H. November 3, 2000); Chapman v. Mazda Motor of America, 7 F. Supp.2d 1123 (D. Mont. 1998); McAmis v. Wallace, 980 F.Supp. 181 (W.D.Va.1997); Bates v. Hogg, 921 P.2d 249, 252 (Kan. Ct. App. 1996); Brandon HMA, Inc. v. Bradshaw, 2001 WL 1198984 (Miss. Oct. 11, 2001); Cates v. Wilson, 361 S.E.2d 734 (N.C. 1987); Ellsworth v. Schelbrock, 611 N.W.2d 764 (Wis. 2000). Since it is a "wholly independent" collateral source, Hill's damages are not limited by the amounts paid by Medicaid. However, simply because Hill's damages are not limited by the amount of Medicaid payments received, it does not follow that the only admissible evidence as to amount of her damages was the amount she was billed by Davis. We note that in cases in which evidence of Medicaid payments is admissible, a plaintiff is entitled to a limiting instruction that such payments may not be used to limit recovery.

in making such a determination. Id., citing D. Dobbs, Handbook on the Law of Remedies § 8.1, at 543 (1973) ("The measure of recovery is not the cost of services ... but their reasonable value.... [R]ecovery does not depend on whether there is any bill at all, and the tortfeasor is liable for the value of medical services even if they are given without charge, since it is their value and not their cost that counts."); Restatement (Second) of Torts § 924 comment f (1979) ("The value of medical services made necessary by the tort can ordinarily be recovered although they have created no liability or expense to injured person, as when a physician donates his services."). See also Ellsworth v. Schelbrock, 611 N.W.2d 764 (Wis. 2000)(noting that test is the reasonable value, not the actual charge).

We are cognizant that several courts hold that the amount paid by Medicaid (or similar programs) is dispositive of the reasonable value of medical services. See e.g. Moorhead v. Crozer Chester Medical Center, 765 A.2d 786 (Pa. 2001); Hanif v. Housing Authority, 246 Cal. Rptr. 192 (Cal. Ct. App. 1988); Bates v. Hogg, 921 P.2d 249, 252 (Kan. Ct. App. 1996). The basis for these cases appears to be that to allow a plaintiff to claim the billed amount, as opposed to the paid amount, would result in a windfall.

However, to hold that the plaintiff is limited to damages in the amount actually paid by Medicaid is contrary to the purposes behind the collateral source rule and would result in a windfall to the defendant tortfeasor. In our view, a defendant physician who agrees to become a Medicaid provider, thereby agreeing to accept as compensation for medical services those amounts set forth in the Medicaid agreement, who thereafter bills a Medicaid patient for the full value of his services, may not claim that the true, reasonable value of those services is the lesser amount paid by Medicaid. Accordingly, we hold the amount billed by Davis was relevant to establish the reasonable value of the services provided to Hill.[4]

Accordingly, the Court of Appeals' opinion is affirmed.

[4] Our holding is criticized by the dissent as "requir[ing] doctors to bear the cost of reimbursing an injured party for a non-existent debt." On the contrary, we simply hold that the reasonable value of the medical services is for the jury's determination.

AFFIRMED.

TOAL, C.J., and MOORE, J., concur. BURNETT, J., dissenting in a separate opinion in which PLEICONES, J., concurs.

JUSTICE BURNETT: I am in complete agreement that the reasonable value of medical services is a jury issue and that Medicaid is a collateral source. I disagree that the amount of billed medical services which is not paid by Medicaid ($51,620.59) is recoverable as compensatory damages. Medicaid's unique characteristics and the law of damages require finding only the amount paid by Medicaid is recoverable as compensatory damages.

The collateral source rule prohibits the reduction of compensation received by an injured party by compensation received from a source wholly independent of the wrongdoer. In re W.B. Easton Const. Co., Inc., 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995). Courts applying the collateral source rule reason "a negligent defendant is not entitled to enjoy the fruits of fortuitous circumstances, employer generosity, or diligent effort on the part of the injured plaintiff" to reduce the tortfeasor's liability. Steeves v. United States, 294 F. Supp. 446, 457 (D.S.C. 1968). I agree Medicaid is a collateral source because it is compensation expended on the injured party's behalf from a source wholly independent of the wrongdoer.

Having concluded Medicaid payments are a collateral source does not end our inquiry. While the collateral source rule applies to "compensation received" by the plaintiff, the rule itself does not address whether the "amount billed" or the "amount paid" is the amount of "compensation received" subject to the rule. See In re W.B. Easton Const. Co., Inc., supra; see also Bates v. Hogg, 921 P.2d 249, 252 (Kan. Ct. App. 1996). The question whether the collateral source rule applies to the billed amount or the paid amount is the central issue of this appeal. The answer to that question is provided by law of damages **not** the collateral source rule.

The majority of courts to consider this issue have concluded the collateral source rule applies only to the amount paid by Medicaid. See, e.g., McAmis v. Wallace, 980 F. Supp. 181 (W.D.Va.1997); Hanif v. Housing Authority, 246 Cal. Rptr. 192 (Cal. Ct. App. 1988); Bates v. Hogg, supra; but see Ellsworth v. Schelbrock, 235 Wis.2d 678, 611 N.W.2d 764 (Wisc. 2000) (holding the plaintiff may recover the amount billed to Medicaid).

The majority of courts to consider this issue predicate their holdings on the central tenet of compensatory damages: awards are intended to make an injured person whole by placing him in the position enjoyed prior to the injury and no more. See Kapushinsky v. United States, 259 F. Supp. 1, 6 (D.S.C. 1966); Hutchinson v. Town of Summerville, 66 S.C. 442, 45 S.E. 8 (1903); 22 Am. Jur. 2d Damages §§ 26, 27 (1988); 11 S.C. Jurisprudence Damages § 2, 3 (1992). Allowing a plaintiff to recover for the amount billed to Medicaid does injury to this principle of law.

The Medicaid program provides individuals with medical treatment by doctors who agree to accept such patients in exchange for payment at a predetermined rate schedule. The patient not only receives medical care, but also incurs no liability for the cost of the care once the doctor accepts payment. The difference between the amount billed and the amount paid, the amount in issue in this case, is "phantom" money in that no one has paid the amount and no one will incur a debt for the amount.

What distinguishes Medicaid from traditional insurance programs and, even its Medicare counterpart, is, the recipients, who fall below a certain income level to be eligible, do not pay to receive the benefit. While the care of the impoverished is an admirable social policy goal, in terms of the law of damages, the Medicaid patient receives a windfall based on a loss not personally incurred. The question is "whether the 'reasonable value' measure of recovery means that an injured plaintiff may recover from the tortfeasor more than the actual amount he paid or for which he incurred liability for past medical care and services." Hanif, 246 Cal. Rptr. at 194-95. Stated another way, should a plaintiff be entitled to claim and should a defendant be subject to liability for this "phantom" money.

Because the plaintiff has never paid nor will ever be liable for the written-off difference between the billed and paid amount, it is "unconscionable to permit the taxpayers to bear the expense of providing free medical care to a person and then allow that person to recover damages for medical services from a tort-feasor and pocket the windfall." Bates, 921 P.2d at 253 (quoting Gordon v. Forsyth County Hospital Authority, Inc., 409 F. Supp. 708, 719 (M.D.N.C. 1976)). This case is "not a situation where

[p]laintiff avoided personally paying a bill because a collateral source stepped in . . . no one paid the written-off amount and as a result . . . [p]laintiff has not incurred this fee." McAmis 980 F. Supp. at 184.

The amount Medicaid pays is a collateral source to benefit a plaintiff who has a right to recover that amount. The excess between the amount billed to and the amount paid by Medicaid, for which a plaintiff is no longer liable, is not protected by the rule. It is not reasonable, under principles of compensatory damage law, to allow Plaintiff to receive a windfall in damages of amounts for which no entity is liable.[5]

The majority opinion predicates its definition of compensatory medical damages on the legal fiction that the billed amount, which no one incurred as a debt, can be a reasonable amount of damages. This Court has created a right to a compensatory remedy for a debt which never has nor ever will exist. In sum, this Court's opinion may be interpreted as a plaintiff's right to be reimbursed for money that will never be expended.

Because the majority desires to require doctors to bear the cost of reimbursing an injured party for a non-existent debt, I dissent.

PLEICONES, J., concurs.

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[5] I would limit this Court's holding to Medicaid because of its unique attributes without deciding whether an individual who has purchased medical insurance and paid premiums, through a private insurer or the Medicare system, should be allowed to introduce evidence of write-offs which may be a part of the benefit of their bargain. Compare Strahley v. Mercy Health Center of Manhattan, 2000 WL 1745291 (D. Kan. 2000) (excluding evidence of medical expenses written off due to a contract between a health care provider and private insurance carrier) with Acular v. Letourneau, 260 Va. 180, 531 S.E.2d 316 (Va. 2000) (allowing evidence of medical expenses written off pursuant to a contractual agreement between private insurance company and medical provider).

The Supreme Court of South Carolina

In the Matter of Brigina
Dicks-Woolridge, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and seeking the appointment of an attorney to protect clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

IT IS FURTHER ORDERED that George B. Cauthen, Esquire, is hereby appointed to assume responsibility for all of respondent's client files which involve bankruptcy matters. Philip B. Atkinson, Esquire, is appointed to assume responsibility for respondent's remaining client files. Mr. Cauthen and Mr. Atkinson shall also assume responsibility for all of respondent's trust

account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Cauthen and Mr. Atkinson shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. They may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that George B. Cauthen, Esquire, and Philip B. Atkinson, Esquire, have been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that George B. Cauthen, Esquire, and Philip B. Atkinson, Esquire, have been duly appointed by this Court and have the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to their offices.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

Jean H. Toal C. J.
FOR THE COURT

Columbia, South Carolina
March 19, 2003