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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993
South Carolina Court of Appeals
Opinion No. 4799, filed 2 March 2011

L. Paul Trask, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask,

Petitioners,

v.

Beaufort County; Curtis Copeland, in His Official Capacity as Coroner of Beaufort County; Judy C. Copeland, as Personal Representative of the Estate of Curtis M. Copeland; and Copeland Company of Beaufort, LLC,

Respondents.

PETITIONERS' REPLY BRIEF ON CERTIORARI

Thomas S. Tisdale, Jr., Esquire
Jason S. Smith, Esquire
HELLMAN YATES & TISDALE, PA
145 King Street, Suite 102
Charleston, South Carolina 29401
Telephone: 843.266.9099
F: 843.266.9188
tst@hellmanyates.com
js@hellmanyates.com

Attorneys for the Petitioners

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Summary Of The Argument In Reply

The Trial Court and the Court of Appeals incorrectly granted and affirmed summary judgment against the Plaintiffs (the "Trasks") on all of their claims. As detailed in Petitioners' Brief on Certiorari, the Trasks clearly presented substantial and extensive evidence demonstrating the Respondents were negligent, grossly negligent, knowingly violated applicable statutes, and generally acted in complete disregard of their responsibilities and duties in handling Paul Trask's body. This is especially true when the Respondents' actions and/or inactions so directly, immediately, absolutely, completely personally, and uniquely impacted the Trasks. As detailed in this Reply, the Respondents' Brief falls far short of providing a substantive defense to the arguments in Petitioners' Brief or otherwise justifying the incorrect decisions of the Trial Court and Court of Appeals.

A. Petitioners' Arguments Were Preserved For Appeal And Are Not Barred By "The Law Of The Case"

The Respondents' Brief sidesteps the substance of this case and instead resorts to haphazardly and inaccurately asserting that the arguments in Petitioners' Brief have not been preserved. Moreover, Respondents argue

that the Trial Court's order granting summary judgment is "the law of the case" on a myriad of key issues at the heart of this dispute, misleading this Court by ignoring or misrepresenting the Trasks' appellate briefs and oral arguments. (R. pp. 150-164; Appeal Brief, pp.1-49; Appeal Reply Brief, pp. 1-25).

For instance, the Respondents inaccurately assert the Trasks never appealed the Trial Court's ruling that allegations relating to or involving the coroner or the nonexistence of an autopsy or the illegal cremation cannot support liability against Copeland individually and Copeland Company. (Respondents' Brief, pp. 5-6, 26). Indeed they did. (See e.g., Appeal Brief, pp. 26-30, 37, 39-45).

Likewise, the Respondents inaccurately assert the Trasks never preserved an argument that Copeland individually and the Copeland Company should be charged with knowledge of the statutory failures of Copeland as Coroner. (Respondents' Brief, p. 7). Indeed they did. (See e.g., Appeal Brief, pp.16 n.19, 18, 39, 41-42).

Similarly, the Respondents inaccurately assert the Trasks did not challenge the Trial Court's characterization of the case as a third-party spoliation of evidence suit. (Respondents' Brief, p. 9). Again, indeed they did. (See e.g., Appeal Brief, pp. 25-28, 32).

For another example, the Respondents inaccurately assert the Trasks did not challenge the Trial Court's interpretation of *Austin v. Beaufort County Sheriff's Office*, 377 S.C. 31, 659 S.E. 2d 122 (2008). (Respondents' Brief, pp. 10-11). Once again, indeed they did. (See e.g., Appeal Brief, pp. 32-33). Moreover, the Respondents unfairly accuse the Trasks of not preserving their arguments as to interpreting, distinguishing, or altering this Court's recent decision in Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537 (2011). (Respondents' Brief, pp. 10-11). It would have been impossible to do so, as the Court of Appeals issued its opinion in this case several months before the Hobbs decision was issued.

For yet another example, the Respondents inaccurately assert the Trasks did not address the element of knowledge of a pending or potential civil action as to the spoliation claim in any of their briefs. (Respondents' Brief, pp. 13-14). Indeed they did. (See e.g., Appeal Brief, p. 34 n. 52).

Continuing this pattern, the Respondents inaccurately assert the Trasks did not appeal the Trial Court's ruling that they had not provided evidence of spoliation. (Respondents' Brief, p. 15). Indeed they did. (See e.g., Appeal Brief, pp. 34-37).

For another example, the Respondents inaccurately assert the Trasks did not appeal the Trial Court's ruling with respect to violation of

S.C. Code § 16-17-600. (Respondents' Brief, pp. 17-18). Indeed they did. (See e.g., Appeal Brief, p. 35).

For a final example, the Respondents inaccurately assert the Trasks did not appeal the Trial Court's ruling that Copeland was acting solely in his capacity as Coroner when the outrageous acts occurred. (Respondents' Brief, p. 21). Indeed they did. (See e.g., Appeal Brief, p. 31).

In sum, the appellate briefs and oral arguments in this case were extensive and explicitly challenged each and every ground of the Trial Court's order granting summary judgment. (R. pp. 150-164; Appeal Brief, pp.1-49; Appeal Reply Brief, pp. 1-25). There is simply no basis for Respondents' misleading assertions that the key issues before this Court are unpreserved and controlled by "the law of the case." Notably, as Respondents curiously note in their own brief, they advanced similar preservation and "law of the case" arguments to the Court of Appeals, which did not give them credence in its opinion, despite the obvious primary role such findings could have played in denying the appeal if they had any merit. (Respondents' Brief, p. 6 n.2).

B. Petitioners' Arguments Do Not Exceed The Partial Writ Of Certiorari

Of course, Petitioners do not deny that this Court denied certiorari as to claims against the Beaufort County parties. In turn, Petitioners have

respectfully not made any further arguments as to liability of those parties. Instead, Petitioners' Brief focuses solely on the acts, omissions, and liability of Curtis Copeland, individually, and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home. To the extent some of those relevant facts overlap with facts that would also be relevant to the dismissed Beaufort County parties if not for their governmental immunity, such overlap is not a new attempt to get around the writ of certiorari as Respondents' suggest, but rather existed in the pleadings and throughout this litigation.**1**

The overlap only reflects the fact that it is virtually impossible to distinguish between Curtis Copeland's official, personal, and corporate identities. Copeland used his position as Beaufort County Coroner to invite business to his personal enterprises – the Copeland Funeral Home. ***He did so in this very case***. (R.p.23, para. 30; R.p.175; lines 13-16). Copeland failed to exercise any care whatsoever to distinguish his role as

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1 The Trasks asserted claims against the County Respondents for (a) negligence, negligence *per se*, and gross negligence (R.p.4; R.pp.20-27, paras. 7-46, 47-51), (b) negligent supervision and training (R.p.4; R.pp.20-29, paras. 7-46, 52-61), and (c) for negligent spoliation of evidence (R.p.4; R.pp.20-26, 29-30, paras. 7-46, 62-70). They asserted claims against Copeland and the Copeland Funeral Home for (a) negligence, negligence *per se*, and gross negligence (R.p.4; R.pp.20-26, 31, paras. 7-46, 71-75) and (b) intentional and/or negligent spoliation of evidence (R.p.4; R.pp.20-26, 32-33, paras. 7-46, 84-89). The Trasks also asserted claims against Copeland for intentional infliction of emotional distress. (R.p.4; R.pp.20-26, 31-32, paras. 7-46, 76-83).

Beaufort County Coroner from his role as owner/operator of Copeland Funeral Home. In fact, it was in his clear economic interests to co-mingle those positions. Copeland used the ***same*** office, ***same*** vehicle, ***same*** computers, ***same*** e-mail addresses, ***same*** land-line telephones, and ***same*** cell telephones in his both of his roles. Furthermore, Copeland used employees from the Copeland Funeral Home as members/employees of the coroner's office. (R.p.213, lines 2-18; R.p.222, line 1 – R.p.223, line 22). Copeland actively declined to distinguish to the public his role as Beaufort County Coroner from that of owner/operator of the Copeland Funeral Home. The same situation existed for Deputy Coroner Herman. These roles, for all practical purposes, were one-in-the-same for both Coroner Copeland and Deputy Coroner Herman.[2] In fact, Copeland

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[2] On 22 November 2005, Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home submitted a Cremation Permit Request form to the Beaufort County Coroner's Office (*i.e.*; from himself to himself) seeking a Cremation Permit authorizing him to cremate the still as yet unidentified body. (R.pp.24-25, para. 36; R.p.35). Copeland directed Connie Herman, an undisputed employee of Copeland Funeral Home and ostensibly a Beaufort County "Deputy Coroner" (R.p.213, lines 2-18; R.p.222, line 1 - R.p.223, line 22), to "officially" sign/execute the Cremation Permit "on behalf of" the Beaufort County Coroner's Office. (R.pp.24-25, para. 36; R.p.35). Ms. Herman did so even though she was not legally qualified to act in the position of the Beaufort County "Deputy Coroner". Deputy coroners must attend at least 16 hours of annual training. 39 S.C. Juris., Coroners, § 2.1 (*citing* S.C. Code Ann. § 17-5-130(A)). Neither Ms. Herman nor any other Beaufort County Deputy Coroner ever attended and/or completed the annual training. (R.p.213, lines 2-20). A deputy coroner must be approved by a Circuit Court Judge. 39 S.C. Juris., Coroners, § 7 (S.C. Bar CLE Division 1992) (*citing* S.C. Code Ann. § 17-5-70 (Thomson West 2007)). Ms. Herman never took an oath or was approved by a judge. (R.p.213, lines 2-22; R.p.222, line 1 - R.p.223, line

profited economically by doing so. Notably, he refused, despite a court order (issued in a related case – Trask v. S.C. Dep't. of Pub. Safety, 2012-UP-623 (Ct. App., filed 21 November 2012)), to produce the computer hard drive from his "office" computer on the grounds that he had sold the Copeland Funeral Home and the computers, admittedly containing records involving Paul Trask III's accident to third-parties and had erased the hard drive prior to the sale. (R.p.253, line 6 – R.p.254, line 1). **3**

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22). In fact, "Deputy Coroner" Herman does not recall ever taking any type of "oath of office" and specifically noted she was never approved by a Circuit Court Judge. (R.p.223, lines 3-9). It is only after being "duly qualified, [as required in S.C. Code Ann. § 17-5-70, that a] deputy coroner may [then] do and perform any or all of the duties appertaining to the office of the coroner." S.C. Code Ann. § 17-5-70. Ms. Herman was never qualified under S.C. Code Ann. § 17-5-70 as a "deputy coroner" and, therefore, was not authorized to perform the duties of a deputy coroner.

3 Copeland admitted he should not have double deleted the "official business" e-mails, especially if they involved anything to do with a coroner's inquest as the Beaufort County record retention policy (Section 12-518.3) required him to maintain those records. (R.p.252, line 8 - R.p.253, line 12). In fact, Copeland specifically stated he "wish[ed] [he] hadn't [done so]." (R.p.253, lines 3-6). "Deputy Coroner" Herman admitted that "[a]ny and all handwritten notes and reports are destroyed after they are transcribed. . . [on the pretext] they may contain notes on other cases that are unrelated to one another." (R.p.291, para. 1). She frequently reiterated the fact that all of the investigators' handwritten notes had been destroyed. (R.p.291, paras. 4-5). Furthermore, it is undisputed that the e-mail and records which Copeland (as coroner) was required to maintain were kept on Copeland's individual company computer located in the Copeland Funeral Home. Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home kept and, in turn, were responsible for the "coroner's records" which Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home later refused to produce and instead "destroyed". This was done even though Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home were under a court order (issued in a related

In sum, the Respondents' interpretation of this Court's partial writ of certiorari seeks to unfairly benefit from the dismissal of the Beaufort County parties by sweeping overlapping relevant facts under the rug and hiding behind the Beaufort County parties' governmental immunity. Such immunity clearly does not apply to Curtis Copeland, individually, and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home, as detailed in Petitioners' Brief.

C. Petitioners Did Not Release The Respondents From Liability When They Settled A Separate Lawsuit With Hess Corporation and Xpress Lane, Inc.

As an additional sustaining ground, the Respondents assert the release in the *Hess/Xpress Lane Litigation* [4] inured to their benefit, such

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case - Trask v. S.C. Dep't. of Pub. Safety, 2012-UP-623 (Ct.App., filed 21 November 2012)), to produce the computer for inspection. Copeland (individually and as owner and operator of both Coastal Cremation Services and Copeland Funeral Home) and the Copeland Funeral Home refused and instead sold the computer containing the "coroner's records" to another private third-party.

[4] The Trasks, individually and as Personal Representatives of Paul's Estate initiated a wrongful death, survival, negligence action against Hess Corporation, Xpress Lane, and others. (R.p.6). *See* L. Paul Trask, Jr., as next of kin and as the duly appointed representative of the Estate of L. Paul Trask, III, deceased v. Hess Corporation; Xpress Lane, Inc. d/b/a Xpress Lane #3; and Xpress Lane, Inc., (Civil Action 2006-CP-10-1276, Beaufort County Court of Common Pleas) (the "Hess Xpress Lane Litigation"). That matter was ultimately resolved through a monetary settlement. (R.p.6; R.p.185, line 20 - R.p.187, line 22, R.p.193, lines 20-25; R.p.194, lines 13-20). The fact the Trasks brought that action and any settlement therein is immaterial to this case. This action has always sought to address the Respondents' improper actions and inactions vis-à-vis Paul's death and the subsequent "investigation".

that all claims against them had been discharged. This position is meritless.

Contrary to the Respondents' position, the *Hess/Xpress Lane Litigation* release only addressed the wrongful death and survival action claims against certain tortfeasors who were allegedly responsible for illegally selling Paul Trask alcohol an hour or so before the accident and which contributed to the death. On the other hand, the claims in this action are completely separate and distinct from the prior claims. Furthermore, the claims in the *Hess/Xpress Lane Litigation* addressed issues which contributed to the actual death of Paul Trask.

The Respondents rely exclusively on *Bowers v. South Carolina Dept. of Trans.*[5] as support for their theory that the Trasks have discharged all claims arising from Paul Trask's accident – regardless of the nature or scope of those claims. The Respondents' reliance is completely misplaced and their argument is meritless.

As an initial statement, for over 38 years our appellate court has consistently followed the principals concerning the effect of a release and

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5 Bowers v. S. C. Dept. of Trans., 360 S.C. 149, 600 S.E.2d 543 (Ct.App. 2004).

settlement agreement enunciated by the Supreme Court in *Bartholomew v. McCarta*.[6] The Supreme Court stated:

> Being untrammeled by the ancient rule which, in our view, tends to stifle settlements, defeat the intention of parties and extol technicality, we adopt the view that the release of one tort-feasor does not release others who wrongfully contributed to plaintiff's injuries unless this was the ***intention of the parties***, or unless plaintiff has, in fact, received ***full compensation amounting to a satisfaction***.[7]

Consequently, unless the parties specifically intended the release to discharge any and all claims or if the injured party received "full satisfaction" for his injuries/damages, a release given to one tortfeasor does not release all other tortfeasors.

In *Bowers v. South Carolina Dept. of Trans.* the Court of Appeals addressed a claim by two separate parties against the SCDOT after those parties had been involved in an automobile accident. Once the two parties had settled their respective claims and signed releases, they brought "separate claims against the SCDOT, alleging its negligence [of failing to

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6 Bartholomew v. McCarta, 255 S.C. 489, 179 S.E.2d 912 (1971).

7 Bartholomew v. McCarta, 255 S.C. 489, 492, 179 S.E.2d 912, 914 (Emphasis added). The so-called "ancient rule" is the "common-law rule that [states], regardless of the intention of the parties, the release of one joint tort-feasor releases all." Bartholomew v. McCarta, 255 S.C. 489, 491, 179 S.E.2d 912, 913 (*citing* Mickle v. Bl;ackmon, 252 S.C. 202, 166 S.E.2d 173 (1969)).

keep the roadway free of foliage obstructions] contributed to the accident."[8] The Court of Appeals concluded the "terms he terms of the Release d[id] not evince an intent to limit its scope to any specifically identified parties[, but was] general and all encompassing in its scope."[9] Moreover, the Court of Appeals concluded the "Release clearly and unequivocally contemplate[d] that the respective settlement payments to [the involved parties] constituted a 'full compensation amounting to a satisfaction.' "[10] Additionally, the Court of Appeals noted the "parties regularly reach compromise settlements for a variety of reasons, including the vagaries and unpredictability of litigation and the desire for finality."[11]

The Court of Appeals, in *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*,[12] addressed the breadth and scope of a release which the Trial Court found had discharged all present and

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[8] Bowers v. S. C. Dept. of Trans., 360 S.C. 149, 151-152, 600 S.E.2d 543, 544-545.

[9] Bowers v. S. C. Dept. of Trans., 360 S.C. 149, 154, 600 S.E.2d 543, 545.

[10] Bowers v. S. C. Dept. of Trans., 360 S.C. 149, 154, 600 S.E.2d 543, 546 (*citing* Bartholomew v. McCarta, 255 S.C. 489, 179 S.E.2d 912).

[11] Bowers v. S. C. Dept. of Trans., 360 S.C. 149, 155, 600 S.E.2d 543, 546.

[12] Ecclesiastes Production Ministries v. Outparcel Associates, LLC, 374 S.C. 483, 649 S.E.2d 494 (Ct.App. 2007).

subsequent claims. The Court of Appeals reversed the grant of summary judgment to the third-party which claimed benefit of the release noting the release agreement was contingent on certain other happenings which had not yet occurred.[13] The Court of Appeals recognized the "Settlement Agreement . . . clearly evince[d] an intent to limit its scope to the claims asserted by [the signatories] against one another."[14]

In the *Hess/Xpress Lane Litigation* the Trasks, individually and in their representative capacities, signed the Release on January 11, 2008. (R.p.119D). The Release provided, in pertinent part, as follows:

> [Mr. and Mrs. Trasks] forever discharge HESS CORPORATION, XPRESS LANE, INC. d/b/a XPRESS LANE #3; XPRESS LANE, INC.; WILLIAM SMOAK[,] and FEDERATED INSURANCE COMPANY his, her, their, or its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations[,] or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service[,] expenses[,] and compensation whatsoever, which the undersigned or the Estate of L. Paul Trask, III[,] now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, forseen [,] and unforeseen injuries and damages of

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13 Ecclesiastes Production Ministries v. Outparcel Associates, LLC, 374 S.C. 483, 500-504, 649 S.E.2d 494, 503-504.

14 Ecclesiastes Production Ministries v. Outparcel Associates, LLC, 374 S.C. 483, 5002, 649 S.E.2d 494, 504.

> any type and nature whatsoever, and the consequences thereof resulting . . . from the death of L. Paul Trask, III on November 22, 2005, including all such claims asserted, which could have been asserted, in that certain litigation now or formerly pending in the Court of Common Pleas for Beaufort County, South Carolina, as captioned herein above.

(R.pp.119B-119C).

The law seems to permit a release to be broadly applied to another action and/or claim when and if the claims being released directly involves the incident which has given rise to the claim. For example, the releases executed by the respective parties in *Bowers v. South Carolina Dept. of Trans.* involved the personal injuries sustained by the injured party and the claims of the at-fault driver stemming directly from the occurrence of the accident. Similarly, their subsequent release-barred claims against the SCDOT arose from the SCDOT's alleged negligence vis-à-vis the roadside overgrown and improperly maintained foliage which would have directly contributed to the accident happening in the first instance.[15] The claims against the SCDOT were not tangential nor caused by the SCDOT's actions/inactions arising after the accident occurred. The claims did not arise due to the accident, they were a contributing cause to the accident taking place at all.

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[15] Bowers v. S. C. Dept. of Trans., 360 S.C. 149, 152, 600 S.E.2d 543, 544.

The release executed by the Trasks in the *Hess/Xpress Lane Litigation* was in no way directed towards or related to the actual cause of Paul Trask's accident or any factor which might have brought about the accident. The claims in this present litigation have been directed towards the Respondents' abject failure to comply with the law in handling the remains of what the Trasks believe to have been their son, as well as the Respondents complete failure to properly produce, maintain, and retain the appropriate electronic records and/or paper documentation detailing their preliminary inquest investigation and their involvement with Paul Trask's body. The claims herein arose as a direct result of the Copeland Respondents' actions which came about after the accident, not from anything related to the actual accident itself. The claims in the *Hess/Xpress Lane Litigation* were completely separate and distinct from the claims herein.

Moreover, this litigation was initiated on or about April 11, ***2007*** (R.p.19), and was well underway when the Trasks signed the *Hess/Xpress Lane Litigation* release on January 11, ***2008*** (R.p.119D), some nine months ***later***. The signatory parties to the *Hess/Xpress Lane Litigation* release never intended to have this case dismissed as part of the settlement of the *Hess/Xpress Lane Litigation*. This case and the *Hess/Xpress Lane*

Litigation were and still are completely separate cases seeking independent and distinctive damages for wholly dissimilar and disconnected injuries.

In an analogous situation, a release given to an at-fault party in an automobile accident by the injured party does not release a subsequent negligently treating physician or healthcare provider who cares for the injured party.**16** Moreover, a release will not bar subsequent claims in this situation where the treating physician's negligence did not merely aggravate the original injury, but instead created a separate and distinct injury.**17**

The *Hess/Xpress Lane Litigation* Release does not bar the Trasks' claims against the Respondents. This alleged "additional sustaining ground" is baseless and must be dismissed as being without any merit whatsoever.

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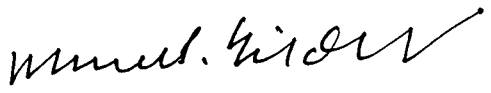
16 *See* 76 C.J.S., Release, § 65 (Thomson Reuters West 2009) (*citing* Knutson v. Life Care Retirement Communities, Inc., 493 So. 2d 1133 (Fla. 4th DCA. 1986); Bourne v. Seventh Ward General Hospital, 546 So. 2d 197 (La.App. 1st Cir. 1989); Morgan v. Cohen, 309 Md. 304, 523 A.2d 1003 (1987)).

17 *See* 76 C.J.S., Release, § 65 (*citing* O'Keefe v. Greenwald, 214 Ill.App.3d 926, 574 N.E.2d 136 (1st Dist. 1991)). *See also generally* Jones v. Brown, 164 Ga.App. 388, 297 S.E.2d 325 (1982); Huff v. Harbaugh, 49 Md.App. 661, 435 A.2d 108 (1981) (When the negligently treating physician is sued before the original tortfeasor and obtains a release from the injured party, the release does not inure to the original tortfeasor's benefit.").

II. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Petitioners, L. Paul Trask, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, respectfully request this Court to reverse the decisions of the Court of Appeals and Trial Court in all respects and remand this matter back to the Trial Court for a jury trial on the merits.

Respectfully submitted:



Thomas S. Tisdale, Jr., Esquire
Jason S. Smith, Esquire
HELLMAN YATES & TISDALE, PA
145 King Street, Suite 102
Charleston, South Carolina 29401
Telephone: 843.266.9099
F: 843.266.9188
tst@hellmanyates.com
js@hellmanyates.com

Attorneys for the Petitioners

Charleston, South Carolina
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PROOF OF SERVICE
For The
PETITIONERS' REPLY BRIEF ON CERTIORARI

Thomas S. Tisdale, Jr., Esquire
Jason S. Smith, Esquire
HELLMAN YATES & TISDALE, PA
145 King Street, Suite 102
Charleston, South Carolina 29401
Telephone: 843.266.9099
F: 843.266.9188
tst@hellmanyates.com
js@hellmanyates.com

Attorneys for the Petitioners

I, Thomas S. Tisdale, Jr., Esquire, hereby certify that on May 20, 2013, I served one copy each of the ***Petitioners' Reply Brief on Certiorari*** submitted by the Petitioners, L. Paul Trask, Jr., personally, and as next of kin and as the duly appointed personal representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, on counsel for the Respondents via United States Mail, postage pre-paid, and addressed as follows:

Andrew F. Lindemann, Esquire
DAVIDSON MORRISON & LINDEMANN, PA
Post Office Box 8568
Columbia, South Carolina 29202-8568

Attorney for the Respondents,
Curtis Copeland, Individually and Copeland Company, LLC

Thomas S. Tisdale, Jr., Esquire

Charleston, South Carolina
May 20, 2013