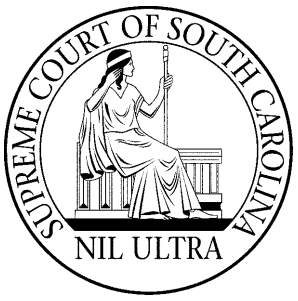

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 14
April 12, 2023
Patricia A. Howard, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Sohail Abdulla, Appellant,

v.

Southern Bank, Respondent.

Appellate Case No. 2019-001142

Appeal From Aiken County
Maite Murphy, Circuit Court Judge

Opinion No. 5976
Submitted October 3, 2022 – Filed April 12, 2023

AFFIRMED

Tucker S. Player, of Player Law Firm, LLC, of Chapin, for Appellant.

Mark Louis Wilhelmi, of Mark L. Wilhelmi P.C., of Augusta, Georgia, for Respondent.

LOCKEMY, A.J.: Sohail Abdulla appeals an order from the circuit court dismissing his case against Southern Bank for lack of personal jurisdiction. On appeal, Abdulla argues (1) the circuit court's order contained numerous errors of fact that were unsupported by the record, (2) the circuit court erred by finding Southern Bank's delay in filing its motion to dismiss was reasonable under

Maybank v. BB&T Corporation,[1] and (3) two substantive errors of law controlled the circuit court's decision. For the reasons stated below, we affirm.

FACTS/PROCEDURAL HISTORY

Prior to 2010, Abdulla resided in Augusta, Georgia, and at the commencement of this litigation, he resided in Aiken County, South Carolina. Southern Bank is a Georgia corporation with its main office in Burke County, Georgia.

In 1997, Abdulla placed jewelry, consisting of two gold and diamond rings, one gold ring, and a platinum bar pin, in the vault of Southern Bank's Waynesboro, Georgia branch. In 1998, Abdulla opened a business checking account with Southern Bank, and it provided financing for Abdulla's business, Sportsman's Link, Inc. (Sportsman's), a sporting goods store in Augusta, Georgia. Sportsman's was a Georgia corporation, and Abdulla was the president and CEO.

In 2007, Sportsman's filed for Chapter 11 bankruptcy in the United States Bankruptcy Court, Southern District of Georgia, Augusta Division, and the bankruptcy was converted to a Chapter 7 bankruptcy proceeding on July 22, 2008.

In the bankruptcy proceeding, Southern Bank filed a proof of claim, a form used by Southern Bank to indicate the amount of the debt owed by Abdulla on the date of the bankruptcy filing, which stated it had a secured proof of claim in the amount of $853,718; it subsequently filed an amended unsecured proof of claim for the amount of $265,962.86.[2]

In February 2017, Abdulla filed a complaint against Southern Bank. He alleged Southern Bank improperly converted jewelry he had provided to it, that served as collateral for loans he obtained. He asserted jurisdiction was proper under the state's long-arm statute.[3] The complaint further stated (1) Southern Bank provided two proofs of claim to the bankruptcy court and (2) Southern Bank had notified the bankruptcy court it held the jewelry in its vaults in each of those proofs of claim. Abdulla alleged because he no longer had outstanding debts with Southern Bank, it

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[1] 416 S.C. 541, 787 S.E.2d 498 (2016).

[2] "[S]ecured or unsecured status in a bankruptcy refers to whether or not the creditor has an interest in property of the bankrupt estate." *Rock Hill Nat'l Bank v. Honeycutt*, 289 S.C. 98, 102, 344 S.E.2d 875, 877 (Ct. App. 1986)

[3] S.C. Code Ann. § 36-2-803(A)(3) (Supp. 2022).

should return the jewelry to him. He asserted Southern Bank claimed he removed the jewelry in 2004, but he contended he never removed the jewelry.

In its answer, Southern Bank argued jurisdiction was improper under the long-arm statute because (1) all loan agreements between Sportsman's and Southern Bank were executed in Georgia; (2) Sportsman's was a Georgia corporation; and (3) Southern Bank did not transact business with Abdulla or Sportsman's outside of Georgia. Southern Bank stated it would file a separate motion to dismiss. Southern Bank also indicated Abdulla "removed all items from the bank vault on or about May 27, 2004, without permission or knowledge of the bank lending officer(s)."

On May 19, 2017, Abdulla's counsel contacted Southern Bank's counsel and inquired if it would be possible for Southern Bank to answer "some general discovery requests" regarding the jewelry. Abdulla's counsel stated providing discovery responses could "expedite the disposition" of the case and requested proof Abdulla took the jewelry in 2004.

Southern Bank responded to Abdulla's interrogatories and requests for production. It provided a description of the jewelry in an attached document. Southern Bank stated two former employees released the pieces of jewelry to Abdulla on March 9, 2004, and Southern Bank provided a copy of a vault ledger log. The vault ledger log stated "Abdulla, Sohail[,] jewelry 3 rings 1 brooch[,] 5/29/97[,] rel 3/9/04[,] SH KSC."

Southern Bank filed a motion to dismiss for lack of personal jurisdiction, arguing the circuit court lacked jurisdiction because (1) it had never transacted business in South Carolina with Abdulla or Sportsman's, (2) all contractual business between it and Abdulla and Sportsman's occurred in Georgia, (3) Abdulla was a resident of Georgia during the time he transacted business with it, and (4) it had no physical locations in South Carolina. Southern Bank further asserted the circuit court did not have personal jurisdiction over it because it did not have the requisite minimum contacts and did not purposefully avail itself of the privileges of conducting business in South Carolina.

Ralph Dickey, president of Southern Bank, provided an affidavit in support of the motion to dismiss. He stated Abdulla provided Georgia addresses for his personal accounts and Sportsman's business account. According to Dickey, as a result of the liquidation of Sportsman's, Southern Bank sustained a loss of $363,000.

Dickey also attested Southern Bank did not have any physical locations in South Carolina and had not conducted business with Abdulla in South Carolina.

Abdulla filed a response to Southern Bank's motion to dismiss. He argued (1) Southern Bank asserted it had the jewelry in the proofs of claim filed with the bankruptcy court; (2) the long-arm statute conferred jurisdiction because Southern Bank committed an out-of-state tortious act that resulted in an in-state injury; and (3) Southern Bank waived its defense by engaging in discovery and dilatorily filing its motion.

On February 20, 2018, the parties submitted a consent motion for entry of a scheduling order. The consent motion notified the circuit court that (1) Southern Bank's primary witness was unavailable for a deposition in February because of a surgery; (2) Southern Bank's motion to dismiss was scheduled for a hearing on April 2, 2018, and would need to be heard before trial; and (3) a scheduling order was necessary for the parties to complete discovery and proceed with Southern Bank's motion to dismiss.

At his March 2018 deposition, Abdulla stated he had resided in Aiken since 2010. Abdulla confirmed that prior to his departure to the Middle East in 2008, he had lived in Georgia and never previously lived in South Carolina. When asked if he and Southern Bank executed all the prior loan agreements in Georgia, Abdulla answered affirmatively. He also confirmed Sportsman's was located in Augusta, Georgia, before its dissolution. Abdulla stated that in 2010, he requested Southern Bank provide him with an accounting and all documents it had it in its possession related to his personal accounts, Sportsman's accounts, defaults, and bankruptcy sales. When asked if he recalled going to the bank and removing the jewelry, Abdulla stated the vault ledger log did not contain his signature and asked how could he remove items that were collateral.

Abdulla filed an affidavit stating he had been a resident of South Carolina since 2010. He asserted Southern Bank filed proofs of claim that stated it held the jewelry as collateral. According to Abdulla, in 2010 and in 2016, he requested all documents and an accounting of his activities with Southern Bank but was "largely ignored." He further attested that after his request in 2016, Southern Bank informed him the items were removed in 2004.

At the hearing on the motion to dismiss, the parties raised substantially similar arguments as they had in their motions and responses. The circuit court

subsequently dismissed Abdulla's complaint for lack of personal jurisdiction. The circuit court determined Southern Bank did not have contact with Abdulla after he moved to South Carolina and they only conducted business with him while he was a Georgia resident. Further, it found Southern Bank did not waive its defense under *Maybank*. It held Southern Bank responded to Abdulla's discovery requests to expedite the case, depositions were conducted to determine the jurisdictional issue, and Southern Bank did not submit any discovery requests of its own. The circuit court concluded Abdulla did not establish personal jurisdiction in his complaint or in his affidavit and he could not "satisfy the requirements of due process," which would subject Southern Bank to the jurisdiction of the court.

Abdulla filed a motion to reconsider, which the circuit court denied. This appeal follows.

ISSUES ON APPEAL[4]

1. Did the circuit court's decision contain numerous errors of fact that were wholly unsupported by the record?

2. Did the circuit court err in finding Southern Bank's delay in filing its motion to dismiss was reasonable under *Maybank*?

3. Was the circuit court's decision controlled by two substantive errors of law and should it be reversed?

STANDARDS OF REVIEW

"The question of whether a court may exercise personal jurisdiction over a nonresident defendant is one that must be resolved upon the facts of each particular case." *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016). "The decision of the [circuit] court should be affirmed unless unsupported by the evidence or influenced by an error of law." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

"It is well-settled that the party seeking to invoke personal jurisdiction over a non-resident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction." *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). "At the pretrial stage, the burden of

[4] We address issues one and three together.

proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits." *Id.* at 328, 594 S.E.2d at 882. "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

This court reviews a circuit court's determination regarding a waiver of a personal jurisdiction defense under an abuse of discretion standard. *Maybank*, 416 S.C. at 566, 787 S.E.2d at 511. "An abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support." *Ellis v. Davidson*, 358 S.C. 509, 524, 595 S.E.2d 817, 825 (Ct. App. 2004).

LAW/ANALYSIS

I. Exercise of Personal Jurisdiction

Abdulla argues the circuit court erred in determining it could not exercise personal jurisdiction over Southern Bank. We disagree.

South Carolina's long-arm statute provides that "[a] court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's . . . commission of a tortious act in whole or in part in this State . . . ." § 36-2-803(A)(3).

"The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant." *Moosally*, 358 S.C. at 330, 594 S.E.2d at 883. "Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.*

"Traditionally, our courts have conducted a two-step analysis to determine whether specific jurisdiction is proper by 1) determining if the long[-]arm statute applies and 2) determining whether the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements." *Cribb v. Spatholt*, 382 S.C. 475, 483, 676 S.E.2d 706, 710 (Ct. App. 2009). "However, a more recent trend compresses the analysis into a due process assessment only." *Id.*

"Courts have construed South Carolina's long-arm statute, which affords broad power to exercise personal jurisdiction over causes of action arising from tortious acts and injuries in South Carolina, to extend to the outer limits of the [D]ue [P]rocess [C]lause." *Hidria, USA, Inc.*, 415 S.C. at 540, 783 S.E.2d at 843. "Because we treat our long-arm statute as coextensive with the [D]ue [P]rocess [C]lause, the sole question becomes whether the exercise of personal jurisdiction in this case would violate the strictures of due process." *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883.

"Due process requires a defendant possess minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice." *Cribb*, 382 S.C. at 483, 676 S.E.2d at 711. "Courts apply a two-pronged analysis when determining whether a defendant possesses minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice." *Id.* at 484, 676 S.E.2d at 711. "The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the 'power' to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair." *Power Prod. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 432, 665 S.E.2d 660, 665 (Ct. App. 2008). "To satisfy the power prong, the court must find the defendant directed his activities to residents of South Carolina and that the cause of action arises out of or relates to those activities." *Cribb*, 382 S.C. at 499, 676 S.E.2d at 719. "The defendant must purposefully avail itself of the privileges of conducting activities in this State, thus invoking the benefits and protections of our laws." *S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 261, 423 S.E.2d 128, 131 (1992). "The 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts." *Moosally*, 358 S.C. at 332, 594 S.E.2d at 884. In evaluating the fairness prong, a court considers the following factors: "(1) the duration of the defendant's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Cribb*, 382 S.C. at 484, 676 S.E.2d at 711.

"The plaintiff bears the burden of satisfying both tests." *Hidria, USA, Inc.*, 415 S.C. at 541, 783 S.E.2d at 843. "If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process." *S. Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131.

Initially, Abdulla only raises arguments regarding whether the long-arm statute applies and does not address whether Southern Bank sustained minimum contacts in South Carolina so as to satisfy due process. However, because our courts treat the long-arm statute as coextensive with the Due Process Clause, we address whether Abdulla showed the exercise of personal jurisdiction over Southern Bank would not violate due process. *See Moosally*, 358 S.C. at 329, 594 S.E.2d at 883 ("Because we treat our long-arm statute as coextensive with the [D]ue [P]rocess [C]lause, the sole question becomes whether the exercise of personal jurisdiction in this case would violate the strictures of due process."); *Cribb*, 382 S.C. at 483, 676 S.E.2d at 711 ("Due process requires a defendant possess minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice."); *Hidria, USA, Inc.*, 415 S.C. at 541, 783 S.E.2d at 843 ("The plaintiff bears the burden of satisfying both tests."). We find he did not.

We hold the circuit court did not err in finding it could not exercise personal jurisdiction over Southern Bank under the long-arm statute and Abdulla failed to demonstrate how subjecting Southern Bank to the jurisdiction of the court would not offend due process. We conclude the power prong of the due process consideration is not satisfied by the facts of this case. *See Hidria, USA, Inc.*, 415 S.C. at 539, 783 S.E.2d at 842 ("The question of whether a court may exercise personal jurisdiction over a nonresident defendant is one that must be resolved upon the facts of each particular case."). First, we find Southern Bank's contacts to South Carolina were nonexistent in this matter. *See Power Prod. & Servs Co.*, 379 S.C. at 432, 665 S.E.2d at 665 (determining the court must first "find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the 'power' to adjudicate the action"). Southern Bank's relationship with Abdulla was limited to Georgia. The transactions he conducted with Southern Bank all occurred in Georgia. Southern Bank did not have any locations in South Carolina. Southern Bank did not directly conduct business with Abdulla after he moved to South Carolina in 2010. At all times during its existence, Sportsman's was a Georgia corporation with its physical location in Augusta, Georgia.

Second, we find Abdulla failed to show Southern Bank directed its activities or purposefully availed itself of the privileges of conducting business in South Carolina and thus invoked the benefits and protections of South Carolina's laws such that it could anticipate being "haled" into court here. *See Cribb*, 382 S.C. at

484, 676 S.E.2d at 711 ("To satisfy the power prong, the court must find the defendant directed his activities to residents of South Carolina and that the cause of action arises out of or relates to those activities."); *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131 ("The defendant must purposefully avail itself of the privileges of conducting activities in this State, thus invoking the benefits and protections of our laws."); *Moosally*, 358 S.C. at 332, 594 S.E.2d at 884 ("The 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.").

We conclude Abdulla failed to show (1) Southern Bank established sufficient contacts with this forum such that it should have anticipated being sued here and (2) the exercise of personal jurisdiction over Southern Bank under the long-arm statute comported with the "traditional notions of fair play and substantial justice." *See Cribb*, 382 S.C. at 483, 676 S.E.2d at 711; *see also Hidria, USA, Inc.*, 415 S.C. at 541, 783 S.E.2d at 843 ("The plaintiff bears the burden of satisfying both tests.").

Because Abdulla failed to establish Southern Bank possessed the requisite minimum contacts with South Carolina so as to not offend due process, we do not address the fairness prong of the due process consideration. *See Power Prod. & Servs. Co.*, 379 S.C at 432, 665 S.E.2d at 665 (determining that the court must "find the exercise of jurisdiction is reasonable or fair"); *Hidria, USA, Inc.*, 415 S.C. at 541, 783 S.E.2d at 843 ("The plaintiff bears the burden of satisfying *both* tests.") (emphasis added); *S. Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131 ("If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process."); *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (observing an appellate court need not address remaining issues when the determination of another point is dispositive). Accordingly, we affirm on this issue.

II. Waiver of Defense under *Maybank*

Abdulla argues Southern Bank waived its defense based on lack of personal jurisdiction because it engaged in discovery and delayed in seeking a dismissal. We disagree.

"[A] delay in challenging personal jurisdiction by motion to dismiss may result in waiver, even where the defense was asserted in a timely answer." *Maybank*, 416

S.C. at 565, 787 S.E.2d at 510 (quoting *Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 60 (2d Cir. 1999)).

In *Maybank*, our supreme court determined a trial court acted within its discretion when it found an appellant, a banking corporation, waived its personal jurisdiction defense. 416 S.C. at 566, 787 S.E.2d at 511. In its answer, the corporation reserved its objection to the exercise of personal jurisdiction and subsequently moved for removal to federal court, without allowing the trial court to rule on its defense reservation. *Id.* There, the parties engaged in litigation and discovery, prior to and after remand to the state court, for more than one year, and "[a]fter its active participation in the extensive discovery leading up to trial," the banking corporation reasserted its reservation "a mere one month prior to the start of trial." *Id.* On appeal, the banking corporation argued it was a North Carolina corporation with no operations, offices, or employees in South Carolina and had never provided services to the individual respondent or any individual customer in South Carolina. *Id.* at 564, 787 S.E.2d at 510. Our supreme court determined the defense was waived and the corporation "gambled that it could argue personal jurisdiction on the eve of trial after actively participating in litigation over the course of two and a half years." *Id.* at 566, 787 S.E.2d at 511.

We find the circuit court did not err in determining Southern Bank did not waive its defense. *See Ellis*, 358 S.C. at 524, 595 S.E.2d at 825 ("An abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support."). Here, unlike in *Maybank*, when that appellant waited more than one year after remand back to the state court to reassert the personal jurisdiction defense it simply "reserved" in its answer, Southern Bank stated in its answer the facts and allegations pertinent to its lack of personal jurisdiction defense and timely brought the issue before the circuit court by filing a motion to dismiss after raising the defense. Furthermore, we find Southern Bank did not waive its defense (1) by answering Abdulla's interrogatories and requests for production because it responded at Abdulla's counsel's behest, who requested the responsive discovery from Southern Bank to "expedite the disposition of the case" or (2) by participating in depositions to determine the issue of personal jurisdiction. *See Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ("[A] party may not complain on appeal of error . . . which his own conduct has induced."). Additionally, the parties agreed to a consent motion for entry of a scheduling order, which stated Southern Bank's motion to dismiss would need to

be heard before trial, and agreed the scheduling order was necessary for the parties to proceed with the motion. Accordingly, we affirm this issue.

CONCLUSION

Based on the foregoing, the circuit court's order dismissing Abdulla's claims for lack of personal jurisdiction is

AFFIRMED.[5]

WILLIAMS, C.J., and THOMAS, J., concur.

[5] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jackie Eadon Chalfant, Individually and as a Personal Representative of the Estate of Michael Dallas Chalfant, Appellant,

v.

Carolinas Dermatology Group, P.A., a South Carolina Professional Association, and Mark G. Blaskis, M.D., Individually, Respondents.

Appellate Case No. 2019-001145

Appeal From Richland County
R. Keith Kelly, Circuit Court Judge

Opinion No. 5977
Heard June 15, 2022 – Filed April 12, 2023

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

William T. Geddings, Jr., of Geddings Law Firm, PA, of Manning, and Michael G. Fink, of Fort Myers, Florida, both for Appellant.

Brandon Robert Gottschall, of Sweeny Wingate & Barrow, PA, of Columbia, and Martin S. Driggers, Jr., of Driggers Law Firm, of Hartsville, both for Respondents.

LOCKEMY, A.J.: In this medical malpractice action, Jackie Eadon Chalfant (Appellant) appeals the trial court's grant of a directed verdict in favor of Carolinas Dermatology Group, P.A. (CDG) and Dr. Mark G. Blaskis (collectively, Respondents). Appellant argues (1) expert witness testimony was unnecessary because the common knowledge exception applied to Respondents' failure to provide after-hours contact information and post-operative instructions to her husband, Michael Dallas Chalfant (Decedent); (2) the record contained conflicting testimony as to whether Respondents breached the standard of care in providing post-operative instructions; and (3) expert witness testimony created a question of fact as to whether the Decedent's tachycardia was a contraindication to performing surgery on May 12, 2015, without proper cardiac follow-up. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL HISTORY

On March 31, 2015, Dr. Peter J. Stahl, who was Decedent's primary care physician, referred Decedent to CDG for a consultation regarding skin cancer on his left ear and forehead. Dr. Stahl indicated that at the time of the visit, Decedent was seventy-four years old, weighed 103 pounds, and measured five feet, eight inches. Dr. Stahl also listed Decedent's pulse as 120 beats per minute (bpm) on the referral form.

On May 12, 2015, Decedent completed a surgery consent form which authorized Dr. Blaskis to treat the basal cell carcinoma on his left ear and left cheek with Mohs micrographic surgery. The consent form articulated the risks involved with surgery, including bleeding, infection, scarring, nerve damage, incomplete removal, recurrence, and pain. The same day, Dr. Blaskis performed Mohs surgery on Decedent. Following surgery, the medical report stated: "After a discussion of the risks of bleeding, scarring, infection, pain, and wound dehiscence, informed consent was obtained and the defect was referred to Dr. Brett Carlin for repair. Verbal wound care instructions, with written handout, were given." Dr. Blaskis's paper discharge instructions instructed a patient to leave the pressure bandage on for forty-eight hours and to call "(803) 771-7506 ext. 209" with questions.

Unfortunately, Decedent passed away on May 13, 2015. According to Decedent's death certificate, his primary cause of death was exsanguination and hemorrhage from his left ear surgical site. The death certificate also listed chronic obstructive pulmonary disease and coronary artery disease as other significant conditions.

In January 2017, Appellant, individually and as personal representative of Decedent's estate, filed a complaint against Dr. Blaskis and CDG, alleging medical malpractice, wrongful death, ordinary negligence, and gross negligence.

At trial in 2019, Appellant testified she remained present with Decedent during the entirety of his office visit with Dr. Blaskis. She stated Dr. Blaskis never mentioned the risk of bleeding after surgery and that "[t]he only place [she] saw the word bleeding at all was on the consent form [Decedent] signed before the surgery." Appellant denied Dr. Blaskis ever said anything to them about calling 911 or going to the emergency room (ER) if there was bleeding after surgery. She indicated they were only told not to remove the pressure bandage on Decedent's ear.

According to Appellant, she and Decedent left Dr. Blaskis's office around 4:00 p.m. She recalled that when they got home from the surgery, Decedent poured himself a glass of vodka and cranberry juice, which he drank over the course of the evening. Appellant stated Dr. Blaskis did not advise Decedent to avoid drinking alcohol or that it would increase the risk of bleeding. She indicated she noticed "blood oozing from underneath [Decedent's] bandage" around 7:00 p.m. and gave him some paper towels. Appellant testified she then looked at the post-op instructions sheet and called the number on the sheet due to her concerns. She stated she dialed the number and the first prompt said "if this is a true emergency, hang up, [and] dial 911" but she did not believe the situation was a true emergency. Appellant explained the next prompt directed her, "if you know your party's extension, dial it now," and she entered the extension listed on the instructions sheet. She testified that because she entered the extension, she did not hear the rest of the message prompt, as detailed below.

Appellant submitted CDG's after-hours phone message on the date of Decedent's death as an exhibit. The prompt read:

> You have reached Carolinas Dermatology After-Hours. If this is a true emergency, please hang up now and call 911. If you know your party's extension you may dial it now. To hear our automated options, press 1. For a prescription refill or to leave a message to be returned on the next business day, please press 2. For all other serious medical concerns, dial 9 now for our answering service. To hear these options again, press the * key.

Appellant stated she left a message but never received a call back and "assumed that it must not be an emergency if they didn't immediately call me back."

According to Appellant, as they ate dinner and watched television, Decedent continued to dab the blood with paper towels. She explained she "suggested that [they] should go to the [ER] and have it checked out" but Decedent refused to go. Appellant recalled a conversation with a friend named Bob, and Bob also suggested they go to the emergency room; however, Decedent refused. Appellant further indicated that if Dr. Blaskis had said to go to the ER if there was bleeding, Decedent "would certainly have done what the doctor said."

Appellant testified Decedent changed his shirt before bed because there was blood on his collar and t-shirt, and she placed a towel over his pillow before they went to bed. She recalled Decedent awoke at 3:30 a.m., sat on the side of the bed, used his inhaler, and then laid back down. Appellant stated she heard Decedent get up and walk to the bathroom around 4:30 a.m., where she found him sitting on the toilet. According to Appellant, she asked if he was okay, and he requested she bring his inhaler. She indicated that when she re-entered the bedroom and turned on the lights, she saw a large amount of coagulated blood on the pillow. Appellant explained she then heard something fall in the bathroom and returned to find Decedent slumped against the wall. Appellant testified the paramedics arrived at 5:51 a.m. to transport Decedent to the hospital; unfortunately, medical personnel were unable to revive him.

On cross-examination, Appellant testified she did not know there were more prompts on the after-hours message after the prompt to enter a party's extension. She further acknowledged she never tried to dial the number again.

Dr. Blaskis testified he only provided patients with one page of discharge instructions after completing surgery because he had been trained to give extensive verbal post-operative instructions. He maintained, "I've never had a patient in 20,000 patients I've treated, nobody has left my office without . . . having heard about post[-]op bleeding at least half a dozen times." Dr. Blaskis recalled Appellant and Decedent "were told extensively to call me if there was bleeding." He then stated that "the standard of care is . . . verbal instructions are as good as written."

Dr. Blaskis acknowledged he would have been able to save Decedent if Decedent had contacted him on the night of surgery. However, Dr. Blaskis further

acknowledged he knew that when patients dialed extension 209, the call would go to his medical assistant's desk, not an answering service, but if a patient listened to the entire message prompt, he could reach the answering service. He indicated all of the doctors and partners of the practice approved the outgoing message and forms used in this case. Dr. Blaksis further stated another doctor who conducted Mohs surgery at his practice, Dr. Long Quan, gave patients his cellphone number.

Dr. Blaskis also testified that although Decedent's heartrate was 116 bpm on the day of surgery, he "felt very comfortable with" Decedent's primary care physician's assessment and referral for surgery with a heartrate of 120 bpm.

Prior to trial, Respondents completed an interrogatory indicating Debbie Clarke and Ashley Grant "had the duty or responsibility to establish and implement polic[]ies, procedures, rules, standing orders and/or protocols which [CDG] had in place regarding the recognition, management and prevention of post-operative complications on or about May 12, 2015." However, Clarke later testified she was not responsible for the forms used with regard to the care given to Decedent.

Dr. Jing Zhang, the president of CDG, also testified at trial that Clarke and Grant—CDG's practice manager and office manager, respectively—had no medical training. He explained they were responsible for ensuring "all the policies [were] fulfilled to the criteria of the law[]" but were not responsible for ensuring the standard of care. Dr. Zhang indicated that, "For each medical procedure[], it's up to each individual doctor" and "their training and the medical board govern[s] . . . what is the standard of care." He further stated CDG's doctors develop their own forms and materials provided to patients based on different training and subspecialties.

Dr. Pearon Lang, who was qualified as an expert witness for Respondents, testified bleeding was a major concern in the first twenty-four hours after surgery, and his post-op form addressed what to do about bleeding. He indicated that if a surgeon failed to discuss any unique risks a particular patient presented with based on their condition, then that failure would fall below the standard of care. According to Dr. Lang, after reviewing Decedent's complete medical charts and exhibits in the case, he did not believe Dr. Blaskis breached any standard of care. Dr. Lang indicated the risks of the procedure were clearly outlined in the consent form Decedent signed prior to surgery, and it was within the standard of care to give discharge instructions verbally. He further testified he expected a patient to call 911 or go to the ER if unable to reach the doctor.

Regarding CDG's after-hours phone message, Dr. Lang acknowledged, "it would be ideal if [the after-hours phone number] went straight to an answering service," but stated if there was "some sort of message system set up so that eventually the patient will get to the answering service," the message would be acceptable. Dr. Lang further opined Dr. Blaskis's phone prompt "was a very good message . . . easy to follow." He recalled the after-hours telephone number at his office went immediately to an answering service.

Dr. Lang opined Decedent's 116 bpm heartrate on the day of surgery would be considered tachycardia. When questioned whether tachycardia would be a contraindication to performing Mohs surgery, Dr. Lang replied, "[Y]ou need to look at the big picture" and explained Decedent's heartrate at 116 bpm "was baseline for him." He further opined Decedent was a suitable candidate for Mohs surgery and it was within the standard of care to proceed when his referral heartrate showed 120 bpm. Appellant then cross-examined Dr. Lang with his deposition testimony, in which he stated he would have sent Decedent for an assessment before performing surgery. Dr. Lang explained he changed his opinion after reviewing both the referral form and the primary care records from Dr. Stahl, indicating "the risks [we]re minimal." He explained that although the surgery could have been postponed for further assessment, it was unnecessary.

Dr. Sean Christensen, who was also qualified as an expert in Mohs surgery and dermatology, agreed it was within the standard of care to give verbal post-operative instructions. He further opined that Dr. Blaskis performed Decedent's Mohs surgery within the standard of care. However, Dr. Christensen explained that if a doctor failed to discuss with a patient all known risks and complications of the proposed surgery, then that would fall below the standard of care. He stated a doctor was also responsible "to tell the patient what to do if they have any of the potentially expected complications including bleeding . . . ." Dr. Christensen explained his concern that Dr. Blaskis's discharge instructions did not adequately educate a patient what to do about bleeding. He stated that although Dr. Blaskis said he educated Decedent, Dr. Blaskis had not "documented in the medical record."

Dr. Christensen testified he believed Dr. Blaskis's instructions as to how to get in touch with his office were inconsistent and confusing. He stated the extension would not help a patient on the night of surgery "[b]ecause [the message prompt] clearly says if you know your party's extension, dial it now, and [Dr. Christensen thought] that most people in that situation would dial it now if they were given an

extension by the surgeon who performed the surgery." He was asked whether dialing the extension was "common sense," and he replied it was. Dr. Christensen testified patients were directed immediately to the on-call doctor at his office. He acknowledged he expected a patient who experienced bleeding like Decedent would call 911 or go to ER if they could not get in touch with the doctor. Dr. Christensen opined that stopping Decedent's bleeding would have saved his life.

Dr. Christensen further testified he would have been concerned regarding Decedent's elevated heartrate and it was unclear whether Dr. Blaskis adequately assessed the heartrate. However, he acknowledged he may have gone forward with the Mohs surgery on Decedent after obtaining additional information as to whether Decedent's heartrate constituted a medically concerning condition. However, he stated that if a doctor failed to provide his patient with a thorough examination before surgery, then the doctor's actions would fall below the standard of care.

Dr. Amy Durso testified she conducted an autopsy on Decedent and explained his cause of death was blood loss due to hemorrhage from the left ear surgical site with contributing factors to include "chronic obstructive pulmonary disease, coronary disease, and adult failure to thrive." Dr. Durso explained Decedent lost enough blood on the night of his death to fill "two cans of Coke and maybe three."

At the close of Appellant's case, Respondents moved for a directed verdict, arguing Appellant failed to prove a breach of the standard of care and causation. In response, Appellant requested to amend her complaint to conform to the evidence and include the common knowledge exception. Respondents replied the discharge instructions sheet was prepared and approved by doctors; thus, expert testimony was necessary to prove a breach of the standard of care.

The trial court denied Appellant's request to amend her complaint and granted Respondents' motion for a directed verdict, finding there was no evidence upon which a reasonable jury could conclude the alleged negligent act or omissions from Dr. Blaskis proximately caused Decedent's death. This appeal followed.

ISSUES ON APPEAL

1. Did the trial court err in granting a directed verdict against Appellant for failure to establish all elements of medical malpractice claims by expert witness testimony when the common knowledge exception was applicable because the

evidence introduced at trial established Respondents' failure to provide Decedent with after-hours contact information and post-surgery instructions?

2. Did the trial court err in granting a directed verdict against Appellant as there existed conflicting testimony regarding a breach of the standard of care related to post-surgery instructions?

3. Did the trial court err in granting a directed verdict against Appellant when conflicting testimony by Respondents' expert witness created a question of fact regarding a breach as to the standard of care when the Respondents' expert testified he would not have operated on Decedent because his tachycardia was a contraindication to performing surgery on May 12, 2015, without proper cardiac follow-up?

STANDARD OF REVIEW

"A directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." *Guffey v. Columbia/Colleton Reg'l Hosp., Inc.*, 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). "When reviewing a directed verdict, [the appellate] court will view the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Thomas v. Dootson*, 377 S.C. 293, 296, 659 S.E.2d 253, 255 (Ct. App. 2008). "This court will reverse the circuit court's ruling on a directed verdict motion only when there is no evidence to support the ruling or when the ruling is controlled by an error of law." *Turner v. Med. Univ. of S.C.*, 430 S.C. 569, 582, 846 S.E.2d 1, 7 (Ct. App. 2020).

LAW/ANALYSIS

I. Common Knowledge Exception

First, we observe Appellant was not required to plead the common knowledge exception in her complaint because the exception is encompassed as an element of a medical malpractice claim. *See Pederson v. Gould*, 288 S.C. 141, 143, 341 S.E.2d 633, 634 (1986) ("In medical malpractice actions, the plaintiff must use expert testimony to establish both the required standard of care and the defendant's failure to conform to that standard, *unless the subject matter lies within the ambit of common knowledge and experience*, so that no special learning is needed to evaluate the conduct of the defendant." (emphasis added)).

Second, Appellant argues the trial court erred by granting a directed verdict because the common knowledge exception was applicable, and the evidence established Respondents failed to provide Decedent with after-hours contact information and post-surgery instructions. She asserts that in society today, it is commonplace to interact with automated telephone prompts and most individuals will dial the extension when instructed to do so rather than listen to the message in its entirety. Thus, Appellant contends whether Respondents committed medical malpractice by providing a discharge form with instructions to dial an extension lies within the ambit of common knowledge. We disagree.

"[O]ur [s]upreme [c]ourt has held that in any 'area beyond the realm of ordinary lay knowledge, expert testimony will usually be necessary to establish both the standard of care and the defendant's departure therefrom.'" *Hook v. Rothstein*, 281 S.C. 541, 551, 316 S.E.2d 690, 697 (Ct. App. 1984) (quoting *Kemmerlin v. Wingate*, 274 S.C. 62, 65, 261 S.E.2d 50, 51 (1979)). "When expert testimony is not required, the plaintiff must offer evidence that rises above mere speculation or conjecture." *Hickman v. Sexton Dental Clinic, P.A.*, 295 S.C. 164, 168, 367 S.E.2d 453, 455 (Ct. App. 1988). "The application of the common knowledge exception in proving negligence in a case involving medical malpractice depends on the particular facts of the case." *Brouwer v. Sisters of Charity Providence Hosps.*, 409 S.C. 514, 521, 763 S.E.2d 200, 203-04 (2014) (quoting *Hickman*, 295 S.C. at 168, 367 S.E.2d at 455). "Ultimately, due to the fact-specific nature of the determination, it is a question that must be left within the discretion of the trial judge." *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 154, 747 S.E.2d 468, 481 (2013).

Several courts have addressed the applicability of the common knowledge exception. *Compare Brouwer*, 409 S.C. at 522, 763 S.E.2d at 204 (finding that the "negligent exposure of a patient to latex with a known allergy can result in an allergic reaction in that patient" was a matter within common knowledge); *Green v. Lilliewood*, 272 S.C. 186, 192, 249 S.E.2d 910, 913 (1978) (holding it was a matter of common knowledge that a tubal ligation renders an intrauterine device or any other birth control device useless); *Dootson*, 377 S.C. at 296, 659 S.E.2d at 255 (holding a claim arising from a surgical drill that burns skin on contact falls within common knowledge or experience of laymen), *with Pederson*, 288 S.C. at 143, 341 S.E.2d at 634 (finding damage to the ureter during a hysterectomy did not fall in common knowledge exception); *Melton v. Medtronic, Inc.*, 389 S.C. 641, 665, 698 S.E.2d 886, 899 (Ct. App. 2010) (holding whether something so complex as an

implanted cardioverter defibrillator was operating properly was not common knowledge); *Carver v. Med. Soc'y of S.C.*, 286 S.C. 347, 350, 334 S.E.2d 125, 127 (Ct. App. 1985) (explaining that "the use of an electrosurgery machine during open-heart surgery and the procedures medical personnel should follow when the machine is in operation are not matters within the ambit of common knowledge or experience"); *Gass v. Haines*, 298 S.C. 549, 551, 381 S.E.2d 923, 925 (Ct. App. 1989) (finding the treatment of glass puncture wounds was not in the common knowledge of a jury).

We hold the trial court properly granted a directed verdict as to the one-page telephone discharge instructions and the phone prompt because no expert testified Dr. Blaskis or CDG breached the standard of care. *See Babb*, 405 S.C. at 154, 747 S.E.2d at 481 ("Ultimately, due to the fact-specific nature of the determination, it is a question that must be left within the discretion of the trial judge."); *Pederson*, 288 S.C. at 143, 341 S.E.2d at 634 ("In medical malpractice actions, the plaintiff must use expert testimony to establish both the required standard of care and the defendant's failure to conform to that standard, unless the subject matter lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant."). Additionally, we find the standard of care and breaching the standard of care did not lie within the ambit of common knowledge. Multiple doctors testified as to their differing uses of discharge instructions and phone prompt systems, which made the necessity of expert testimony more likely to aid the jury in determining the standard of care and a breach of that standard of care. Regarding the discharge instructions, Dr. Zhang testified CDG's doctors developed their own materials they provided to patients based on different trainings. As to the phone prompt system, Dr. Quan gave his patients his cellphone number in case of an emergency, Dr. Lang testified his office's prompt went directly to an answering service, and Dr. Christensen testified his after-hour calls were directed immediately to the on-call physician. Thus, we believe the trial court properly granted a directed verdict on these issues.

II. Breach of Standard of Care and Post-Surgery Instructions

Appellant argues the trial court erred by granting a directed verdict to Respondents because there existed conflicting testimony regarding the breach of the standard of care related to post-surgery instructions. She asserts several experts testified that the standard of care required discussing the risks associated with surgery, including bleeding, before, during, and after surgery. Appellant contends a question of fact requiring submission to the jury was created because she testified Dr. Blaskis

failed to provide Decedent with post-operative instructions related to bleeding, in contradiction to Dr. Blaskis's testimony. She also avers that Dr. Christensen was not able to testify that Dr. Blaskis breached the standard of care because he could not definitively state whether Dr. Blaskis gave verbal instructions. Appellant further argues Dr. Blaskis's actions proximately caused Decedent's death because experts testified at trial that if Decedent had been able to communicate with Dr. Blaskis, his bleeding could have been stopped. She contends "circumstantial evidence that is within the common knowledge of the jury based on the sequence of events" could also prove proximate cause. We agree.

> A plaintiff alleging medical malpractice must provide evidence showing: (1) the generally recognized and accepted practices and procedures that would be followed by the average, competent physician in the defendant's field of medicine under the same or similar circumstances, and (2) the defendant departed from the recognized and generally accepted standards.

Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 546, 694 S.E.2d 1, 4 (2010). "Expert testimony is required to establish the duty owed to the patient and the breach of that duty in medical malpractice claims unless the subject matter of the claim falls within a layman's common knowledge or experience." *Turner*, 430 S.C. at 583-84, 846 S.E.2d at 8.

"In a medical malpractice action, the plaintiff must establish proximate cause as well as the negligence of the physician." *Fletcher v. Med. Univ. of S.C.*, 390 S.C. 458, 462, 702 S.E.2d 372, 374 (Ct. App. 2010) (quoting *Guffey*, 364 S.C. at 163, 612 S.E.2d at 697). "Generally, expert testimony is required to establish proximate cause in a medical malpractice case." *Bramlette v. Charter-Med.-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990).

Viewing the facts in the light most favorable to Appellant, we hold the trial court erred in granting a directed verdict on this issue because it was not within the court's authority to resolve conflicts in the testimony presented at trial. *See Dootson*, 377 S.C. at 296, 659 S.E.2d at 255 ("When reviewing a directed verdict, [the appellate] court will view the evidence and all reasonable inferences in the light most favorable to the nonmoving party."); *Turner*, 430 S.C. at 582, 846 S.E.2d at 7 ("This court will reverse the circuit court's ruling on a directed verdict motion only when there is no evidence to support the ruling or when the ruling is

controlled by an error of law."). Regarding the standard of care, Dr. Christensen—a qualified expert—testified a doctor was responsible "to tell the patient what to do if they have any of the potentially expected complications including bleeding . . . ." However, as to breaching the duty, Dr. Christensen explained he could not testify Dr. Blaskis breached his duty because it was unclear whether Dr. Blaskis verbally explained the possible complications as "[i]t was not documented in the medical record." Although Dr. Blaskis testified Appellant and Decedent "were told extensively to call me if there was bleeding," Appellant repeatedly refuted this testimony. As a result, a conflict in trial testimony existed which required submission to the jury. *See Dootson*, 377 S.C. at 297, 659 S.E.2d at 255 ("When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." (quoting *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000))).

In *Stallings v. Ratliff*, 292 S.C. 349, 356 S.E.2d 414 (Ct. App. 1987), Stallings testified at trial that Dr. Ratliff failed to inform her that there was a risk of a perforated esophagus prior to obtaining consent to perform an esophagoscopy. *Id.* at 353, 356 S.E.2d at 416. However, Dr. Ratliff testified he did inform Stallings specifically of the risk of sustaining a perforated esophagus. *Id.* In reversing the grant of a directed verdict, our court explained, "Based on the expert testimony as to standard of care, it was assuredly within the competence of the jury to draw the inference that if [Dr.] Ratliff's testimony was correct there had been no breach of duty, while if Stallings was correct there had been a breach of duty." *Id.* at 354, 356 S.E.2d at 417. As such, it presented a simple "question of who was telling the truth" and "a classic jury issue was presented." *Id.* Similarly, we hold whether or not Dr. Blaskis breached the standard of care by failing to educate Decedent properly was a jury question as to who was telling the truth, Appellant or Dr. Blaskis. Even though Dr. Christensen could not explicitly testify Dr. Blaskis breached the standard of care, he did testify it was a doctor's responsibility to give instructions to the patient regarding bleeding. Moreover, the "breach of duty does not turn on a ritual incantation of certain magic words by an expert witness." *Id.* at 353, 356 S.E.2d at 417.

Additionally, there was enough evidence in the record to submit the issue of proximate cause to the jury. Appellant testified that if Dr. Blaskis had instructed them to go to the ER if bleeding, Decedent "would certainly have done what the doctor said." Both Dr. Blaskis and Dr. Christensen testified that if Decedent had

stopped the bleeding, his life would have been saved. Finally, Dr. Durso testified Decedent's blood loss due to hemorrhage from the left ear surgical site caused his death. Therefore, a jury could have reasonably inferred a causal connection between Dr. Blaskis's alleged failure to warn Decedent regarding the risks of bleeding and his subsequent death by exsanguination. *See Lilliewood*, 272 S.C. at 191, 249 S.E.2d at 912 ("However, where, as here, [b]oth expert testimony and circumstantial evidence of a physician's culpability are presented, the inquiry need only be whether there was sufficient competent evidence from which the jury may have inferred a causal connection.").

III. Breach of Standard of Care and Tachycardia

Appellant argues the trial court erred by granting a directed verdict because there was conflicting testimony from Respondents' expert witness resulting in a question of fact regarding Decedent's tachycardia. She contends that in viewing Dr. Lang's testimony in the light most favorable to her, she presented sufficient expert testimony to warrant submission to the jury. We disagree.

We hold the trial court properly granted a directed verdict in favor of Respondents on this issue because Appellant failed to present expert testimony to establish Dr. Blaskis breached the duty of care by proceeding with surgery despite Decedent's tachycardia. *See Fletcher*, 390 S.C. at 462, 702 S.E.2d at 374 ("On review, an appellate court will affirm the granting of a directed verdict in favor of the defendant when there is no evidence on any one element of the alleged cause of action."); *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 176, 758 S.E.2d 501, 504 (2014) (providing expert testimony is required to establish duty and breach of duty in medical malpractice cases); *Brouwer*, 409 S.C. at 521, 763 S.E.2d at 203 (finding that to establish an action for medical malpractice, a plaintiff must establish the "[r]ecognized and generally accepted standards, practices, and procedures which are exercised by competent physicians in the same branch of medicine under similar circumstances" (quoting 27 S.C. Jur. *Med & Health Prof'ls* § 10 (2014))).

Here, Dr. Lang testified that after reviewing the complete medical chart from Decedent's primary care physician, he did not believe Dr. Blaskis breached any standard of care. He also stated he believed Decedent was a suitable candidate for Mohs surgery, and it was within the standard of care to proceed when his referral heart rate was 120 bpm. When cross-examined with his deposition testimony, Dr. Lang explained he had not previously reviewed Decedent's prior medical records

and, because Decedent's heartrate was normally elevated, the risks of proceeding with surgery at his baseline heartrate were minimal. Moreover, Dr. Christensen, Appellant 's own expert witness, failed to testify Dr. Blaskis breached the standard of care by proceeding with surgery. Thus, there was no conflicting testimony in the record warranting submission to the jury.

We further find there was no evidence presented Dr. Blaskis proximately caused Decedent's death by proceeding with surgery despite his tachycardia because all of the doctors who testified at trial indicated they may have moved forward with Decedent's surgery with his heartrate at baseline. *See Fletcher*, 390 S.C. at 463, 702 S.E.2d at 374 (explaining that in a medical malpractice action, "the plaintiff must present evidence that the defendant's failure to adhere to the standard of care proximately caused the complained[-]of injury"). Therefore, the trial court did not err by granting a directed verdict on this issue.

CONCLUSION

Based on the foregoing, we affirm the trial court's granting of a directed verdict on the issues as to CDG's phone prompt, Dr. Blaksis's one-page discharge instructions, and proceeding with surgery despite Decedent's tachycardia. However, we reverse the trial court's grant of a directed verdict on Dr. Blaskis's post-surgical instructions on bleeding.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

GEATHERS, J., concurs.

HILL, A.J., concurring in a separate opinion:

I concur in the majority opinion but write separately to express my view that the decedent's inaction in response to his active, extensive bleeding may well have exceeded the alleged negligence of Dr. Blaskis. But that is a factual issue that we, except in rare cases, leave to the jury to decide. *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000). This unfortunate case is almost–but not quite–such a rarity.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Diannia R. Taylor, Appellant,

v.

Reginald B. Taylor, Respondent.

Appellate Case No. 2019-002084

Appeal From Greenville County
Tarita A. Dunbar, Family Court Judge

Opinion No. 5978
Submitted December 1, 2022 – Filed April 12, 2023

REVERSED

Melinda Q. Taylor, of Collins Family Law Group, of Monroe, North Carolina, and Tamika Devlin Cannon, of S.C. Victim Assistance Network, of Taylors, both for Appellant.

Walter Christopher Castro, of ALAW, of Greenville, for Respondent.

HILL, A.J.: Diannia Taylor (Mother) petitioned the family court for various relief, including for an order of protection under the Protection from Domestic Abuse Act[1] (the Act) based on allegations her husband, Reginald B. Taylor (Husband), had

[1] S.C. Code Ann. § 20-4-10 to -160 (2014 & Supp. 2022).

physically and sexually abused her. Mother also alleged Husband had molested A.R., her minor daughter from a previous relationship. Mother sought protection from Husband for herself and A.R., as well as custody of the couple's minor sons.

At the emergency hearing, Mother and Husband indicated they had reached an agreement as to the order of protection for Mother but not as to an order of protection for A.R. The family court granted the order of protection as to Mother, finding Husband abused Mother and A.R. However, the family court ruled it could not include A.R. in the order of protection because A.R. did not meet the definition of "household member" under the Act. Mother now appeals.

I. DISCUSSION

Mother argues the family court erred in ruling the Act does not allow orders of protection to be granted to minor household members such as A.R. who are not spouses of, former spouses of, previous cohabitants with, or who have a child in common with the alleged abuser.

This appeal turns on the Act's legislative intent. In construing this intent, we begin by reviewing the text of the Act. When the text is plain and unambiguous, we must enforce it as written. *Smith v. Tiffany*, 419 S.C. 548, 555–56, 799 S.E.2d 479, 483 (2017). We have no license to alter or shade the plain meaning in an effort to stretch or shrink the scope of a statute. *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013). Nor do we have any authority to isolate the words of a statute and ignore our obligation to interpret the statute as a whole, harmonizing the statutory scheme by giving each section effect. *Id.*

The phrase "household member" is plainly defined by the Act as:

> (i) a spouse;
> (ii) a former spouse;
> (iii) persons who have a child in common;
> (iv) a male and female who are cohabiting or formerly have cohabited.

S.C. Code Ann. § 20-4-20(b) (2014 & Supp. 2022). This definition does not include a minor such as A.R. *See Fruehauf Trailer Co. v. S.C. Elec. & Gas Co.*, 223 S.C. 320, 325, 75 S.E.2d 688, 690 (1953) (legislative definition "should be followed in the interpretation of the act or section to which it relates and is intended to apply").

However, our inquiry into whether the legislature intended A.R. to be entitled to an order of protection under the Act does not end here. This is so because, as we shall see, the Act unquestionably refers to protecting "minor" household members several times, without further definition.

To advance our inquiry, we first consider what the words of the Act tell us about its intended scope. "'Order of protection' means an order of protection issued to protect the petitioner or minor household members from the abuse of another household member . . . ." S.C. Code Ann. § 20-4-20(f) (2014). "'Abuse' means: (1) physical harm, bodily injury, assault, or the threat of physical harm; (2) sexual criminal offenses, as otherwise defined by statute, committed against a family or household member by a family or household member." S.C. Code Ann. § 20-4-20(a) (2014). "A petition for relief under this section may be made by any household members in need of protection or by any household members on behalf of minor household members." S.C. Code Ann. § 20-4-40(a) (2014).

We pause to acknowledge that since the Act's passage in 1984, the legislature has tweaked the definition of "household member" several times. 1994 Act No. 519, §§ 2, 3; 2003 Act No. 92, § 11; 2005 Act No. 166, § 7. The evolution of the definition of the term shows the legislature has consistently narrowed it down to its current definition as shown above. This could suggest the legislature intended to make the Act inapplicable to most minors, as few minors would meet the current definition of "household members." However, we find the language the legislature has left in the Act is more compelling then what it has taken out. Despite the Act's several revisions, the legislature has retained the phrase "minor household members" in § 20-4-20(a) and § 20-4-40(a). By keeping the phrase "minor household members" in the Act, we infer the legislature intended to allow minors who do not meet § 20-4-20(b)'s definition of "household members" to receive orders of protection from domestic abuse. After all, there would be no need for the legislature to include the word "minor" before "household members" if it intended for the Act to only protect minors who already met the narrow definition of "household members." Such minors would simply be "household members," leaving the word "minor" with no work to do. *See CFRE, LLC v. Greenville Cnty. Accessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (providing courts "must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" (alterations in

original) (quoting *State v. Sweat*, 379 S.C. 367, 377, 382, 665 S.E.2d 645, 651, 654 (Ct. App. 2008))).

We conclude the Act extends protection to minor household members such as A.R. This construction of the Act best comports with the purpose and intent of the Act. *See Doe v. State*, 421 S.C. 490, 505, 808 S.E.2d 807, 815 (2017) (stating the "overall legislative purpose [of the Act] is to protect victims from domestic violence that occurs within the home and between members of the home"); *Moore v. Moore*, 376 S.C. 467, 476, 657 S.E.2d 743, 748 (2008) ("The Protection from Domestic Abuse Act was enacted to deal with the problem of abuse between family members. The effect of the Act was to bring the parties before a judge as quickly as possible to prevent further violence."); *see also* 2A Sutherland *Statutory Construction* § 47.7 (7th ed.) (statutory definitions may not bind courts when they "defeat a statute's major purpose"). Our conclusion gathers further support from the text of § 20-4-60(a) (2014), which provides orders of protection "shall . . . protect the petitioner or the abused person or persons on whose behalf the petition was filed . . . ." As we have seen, the only persons who may have a petition filed on their behalf are "minor household members." § 20-4-40(a). If the only minors the Act protected were minors who are spouses of, former spouses of, cohabitants with, or who have a child in common with the abuser, it would be unlikely in such instances that there would also be an adult who met the technical definition of "household member" so as to allow the adult to file a petition for protection on the minor's behalf. That would mean such minors would not have access to the courts to enforce the Act.

Interpreting the Act as only protecting minors who meet the definition of household members thwarts the purpose and intent of the Act. It would also leave us with an Act that allows a petitioner living in a household with a domestic abuser to deploy the Act to protect their pets but not their children. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) ("We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention."); S.C. Code Ann. § 20-4-60(C)(8) (Supp. 2022) (providing in an order of protection, the family court may prohibit the respondent harming or harassing "any pet animal owned, possessed, kept, or held by: (a) the petitioner; (b) any family or household member designated in the order; (c) the respondent if the petitioner has a demonstrated interest in the pet animal"); *cf. State v. Walker*, 422 S.C. 89, 90–91, 810 S.E.2d 38, 39 (2018) (holding § 16-25-10(3)'s

definition of "household member" for purposes of determining early parole eligibility for persons convicted of crimes against a household member did not apply to defendant who had murdered father who had abused him).

We therefore interpret the term "minor household member" as used in the Act to include all minors who need protection and who live in the same household as a petitioner and an abusive household member, not just minors who meet the strict definition of "household member" set forth in section 20-4-20(b). Because A.R. was a minor living in the same home as the petitioner (Mother) and the alleged abuser (Husband), we find the family court erred by not granting an order of protection to A.R.

REVERSED.[2]

GEATHERS and MCDONALD, JJ., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.